

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

DAVID BONIFACE,  
NISSANDÈRE MARTYR, and  
JUDERS YSEMÉ,  
  
                    Plaintiffs,  
  
                    v.  
  
JEAN MOROSE VILIENA  
(a.k.a. JEAN MOROSE VILLIENA),  
  
                    Defendant.

Case No. 1:17-cv-10477-ADB

**DECLARATION OF BRIAN CONCANNON JR.**

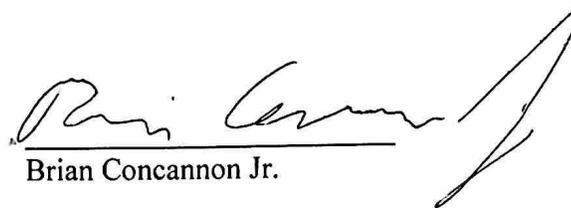
I, BRIAN CONCANNON JR., pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a lawyer who has worked full-time on issues related to human rights and democratic development in Haiti for twenty-four years.
2. I have been retained by counsel for plaintiffs David Boniface, Nissandère Martyr, and Juders Ysemé (“Plaintiffs”) in the above-captioned case as an expert witness on the availability of local remedies in Haiti to Plaintiffs on their claims of extrajudicial killing, torture, and mass arson against defendant Jean Morose Viliena (“Defendant”).
3. I provide this declaration in that capacity and in support of Plaintiffs’ Motion for Partial Summary Judgment on Defendant’s affirmative defense of failure to exhaust local remedies.
4. I provided an expert report in this action, dated January 31, 2022 (the “Concannon Report”). A true and correct copy of the Concannon Report is attached as Exhibit A.

The Concannon Report accurately states the materials I reviewed, opinions that I formed, and bases for those opinions.

5. The matters stated in this declaration and in the Concannon Report are based on my personal knowledge or are my professional opinions. If called as a witness, I could and would testify competently to them.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on March 25, 2022.

  
\_\_\_\_\_  
Brian Concannon Jr.



# EXHIBIT A

**UNITED STATES DISTRICT COURT  
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NISSANDÈRE MARTYR, and

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Plaintiffs,

v.

JEAN MOROSE VILIENA  
(a.k.a. JEAN MOROSE VILLIENA),

Defendant.

Case No. 1:17-cv-10477-ADB

**EXPERT REPORT OF BRIAN CONCANNON JR.**

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## **I. PRELIMINARY INFORMATION**

1. I have been asked by the plaintiffs in the above-captioned matter (“Plaintiffs”) to provide expert testimony on the availability of local remedies in Haiti for their claims of extrajudicial killing, torture and mass arson against defendant Jean Morose Viliena (“Defendant”). Plaintiffs also requested that I provide expert testimony on the applicable Haitian law for the claim of arson. My qualifications, summary of opinions and basis for expertise are set forth in greater detail below.

### **A. Qualifications**

2. I am a lawyer who has worked full-time on issues related to human rights and democratic development in Haiti for twenty-four years, from 1995 to 2019 and again since October 2021.

3. I have been a member of the Massachusetts bar since 1989 and earned a JD *cum laude* from Georgetown University Law Center. I have a BA in French from Middlebury College and studied at the *Université de Paris*. I am fluent in French and Haitian Creole. I have extensive experience on democratic systems and accountability for human rights violations in Haiti, as detailed below and as reflected in my résumé, attached hereto as Exhibit A.

4. I lived and worked in Haiti from May 1995 until February 2004.

5. In 1995 and 1996, I worked for the United Nations/Organization of American States Civilian Mission to Haiti as a Human Rights Observer. My duties with the United Nations included monitoring the justice system, especially its handling of cases involving human rights violations committed by soldiers, police officers and other officials. I met regularly with judges, prosecutors, prison officials, lawyers and victims of human rights violations to discuss the cases, and monitored trials and pre-trial hearings.

6. From 1996 until 2004, I co-managed the *Bureau des Avocats Internationaux* (“Office of International Lawyers”) (“BAI”). The BAI, which received most of its support from Haiti’s elected governments, helped victims pursue civil and criminal cases involving severe violations of human rights in the Haitian justice system. The BAI also collaborated with a police team investigating political killings and advised the Haitian government on justice issues. The BAI’s work, especially the trial of the Raboteau Massacre in the fall of 2000, was internationally recognized as a model of successful prosecution of human rights cases under a fragile justice system.

7. At the BAI, I worked on a daily basis with Haitian lawyers, victims of human rights violations, and regularly with Haitian police, prosecutors, judges and top officials. I met regularly with the Ministers of Justice during that time, and occasionally with the Presidents, in order to provide advice on pursuing human rights cases through the Haitian justice system. I also met regularly with officials from the UN mission and U.S. State Department to discuss prosecuting human rights cases, and briefed visiting delegations from the U.S. Congress.

8. At the BAI, I personally worked on civil and criminal cases involving extrajudicial killings, torture, and mass arson, and supervised lawyers from Haiti, North America, Africa, and Europe working on those cases. My personal duties involved factual research and investigation; coordination with police officers on arrests; research and analysis under Haitian and international law; helping prepare protection plans for activists at risk of retaliation for pursuing cases; consulting on strategy for pursuing human rights cases with victims, government officials, NGOs, the UN, and others; drafting pleadings; and observing pre-trial proceedings and trials.



9. I held a Brandeis International Fellowship in Human Rights, Humanitarian Intervention, and International Law from 2001 to 2003, and a Wasserstein Public Interest Law Fellowship at Harvard Law School from 2005 to 2006.

10. In 2004, I founded the U.S.-based Institute for Justice & Democracy in Haiti (“IJDH”), and have served as IJDH’s Executive Director from 2004 through the present, except for the period from July 2019 to November 2021. During that absence, I served as a board member and volunteer with IJDH, and continued to participate in Haiti human rights work. IJDH provides legal and financial support to the BAI’s efforts to pursue cases in the Haitian justice system, pursues Haitian cases in international fora such as the Inter-American Commission on Human Rights (“IACHR”), and produces documentation of human rights issues in Haiti.

11. At IJDH, I follow political, legal, and humanitarian conditions in Haiti closely. I am in almost daily telephone or email contact with colleagues and collaborators in Haiti, and regularly read news reports and human rights reports about Haiti. I personally work on human rights cases, and supervise colleagues doing the same. My personal involvement includes drafting pleadings and reports, advising on strategy, and providing analysis of both Haitian and international law. I also help coordinate advocacy on human rights cases by a wide network of international experts, including human rights groups such as Amnesty International, Human Rights Watch, the IACHR, and members of the U.S. Congress.

12. In the course of my work at IJDH, I visited Haiti four to six times per year from 2004 to 2019. My most recent visit was in April 2019. During my visits, I typically met with human rights lawyers, current and former elected officials, journalists and community leaders to assess the current conditions in the country. I also regularly brief members of Congress from both parties on human rights in Haiti, especially on the pursuit of human rights cases in Haitian

courts. I also have observed pre-trial proceedings in human rights cases, and conducted training sessions for lawyers on pursuing human rights cases through the Haitian courts.

13. During my time away from IJDH, I was the Executive Director of Project Blueprint, a human rights organization introducing a progressive human rights perspective into discussions of U.S. foreign policy, using examples from Haiti, among other places.

14. I write regularly on human rights and law in Haiti, including book chapters, reports and articles in academic journals and newspapers. I speak frequently about human rights in Haiti at law schools, universities, and conferences, and I am regularly interviewed for radio and television programs throughout the world. Attached along with my curriculum vitae as Exhibit A is a list of select media and all my publications authored in the previous ten years.

**B. Prior Expert Testimony**

15. I am frequently asked to provide expert reports on conditions in Haiti, including in immigration cases. These expert reports have assessed the rule of law in Haiti and the ability of the Haitian government to investigate and prosecute threats, intimidation, and attacks against human rights defenders.

16. In addition, I have been qualified and testified as an expert on Haiti at deposition and/or at trial numerous times before U.S. courts. Attached as Exhibit B is a list of cases where I have testified as an expert witness at deposition and/or at trial in the last four years.

**C. Basis for Expertise and Opinion**

17. This Report is informed by my more than two decades' experience with pursuing cases of politically-motivated violence in Haiti, documenting human rights violations in Haiti, and helping to build the Haitian justice system's capacity to handle politically-motivated violence cases.

18. In preparing this Report, I relied on the materials referred to and cited in this Report as well as my professional and expert knowledge of Haiti detailed above. I have also reviewed/and or relied on the documents and things listed in Exhibit C. These sources are the types of materials I ordinarily use in my assessments as an expert on Haiti.

19. I understand that discovery in this case is still ongoing, and I will supplement this Report, to the extent necessary, based on the discovery or production of additional relevant materials in this case.

20. The principal focus of my twenty-four years' work with the United Nations, the BAI, and IJDH has been the capacity of Haiti's courts and police force to effectively pursue cases of serious violations of human rights, such as murder, torture, and arson. I became intimately familiar with both the formal aspects of this capacity, including Haiti's laws and constitution, and the practical aspects, including the operational and financial limitations of the courts and police; the training of police, judges, prosecutors, and lawyers; political support for or interference with prosecutions; and the risks of pursuing the cases to plaintiffs and their families.

21. A particular focus of my expertise on human rights in Haiti is the availability of national court remedies for serious violations of human rights.

22. I advocate, in my work and in my writings, that plaintiffs avail themselves of a broad array of strategies to advance cases, especially when there are obstacles to justice through the courts. I encourage victims to organize and to bring their cases in the court of public opinion, through media engagement, demonstrations, letter-writing campaigns and other initiatives, as a way to pressure the justice system to respond appropriately to their claims. I encourage them to look creatively for allies within an otherwise hostile system, who can help them advance the cases, or to appeal to top officials who can influence the justice system.

23. Although most of our work on Haiti cases has been with the national court system, at times conditions in Haiti and the context of particular cases presented plaintiffs with little or no likelihood of fair treatment of our claims in Haitian courts and an unacceptable level of risk. In these cases we helped victims pursue remedies outside of Haitian courts. We use non-domestic remedies as a last resort when the domestic remedies are clearly unavailable and there is little likelihood that the conditions can be improved to reach the minimum standards for a fair pursuit of plaintiffs' claims.

**D. Scope of Report**

24. Plaintiffs requested that I assess the availability of local remedies in Haiti for their claims of extrajudicial killing, torture, and mass arson against Defendant.

25. Having reviewed this topic, my conclusions are as follows:

26. *First*, Plaintiffs have no meaningful access to remedies for their claims in the Haitian justice system, due to the inherent weaknesses of the system, including its politicization and corruption, as well as the prevailing political context, discussed *infra* Section II.A. Many of the justice system's weaknesses are chronic, having developed over two centuries, and are not easily corrected. As Defendant acknowledged in his deposition, politics thwarts justice in Haiti. For Plaintiffs, the obstacles presented by the justice system's chronic weaknesses are overlaid by a thick layer of acute obstacles from the relevant political leadership in Haiti. The Martelly and Moïse administrations, which governed from 2011 through the filing of Plaintiffs' U.S. civil suit in 2017, have been willing and able to interfere with the justice system to suit their political ends to an extent unmatched by any of their elected predecessors. Both used their influence in the system to frustrate the efforts of people, such as Plaintiffs, seeking justice for political violence by the administrations' allies.

27. *Second*, Plaintiffs, like others in Haiti who seek justice for politically-motivated attacks, are subject to an ongoing risk of retaliation for attempting to access local remedies, discussed *infra* Section II.B. The Martelly and Moïse administrations insulated themselves from oversight by allowing Parliament to become inactive and undermining the judiciary's independence. They took advantage of this context to conduct a widespread and systematic campaign of repression against political opponents. Plaintiffs' persistent efforts for justice against Defendant, an ally of both administrations in his role as Mayor of Les Irois, Haiti, identify Plaintiffs as the types of political opponents who are targeted by political repression.

28. *Third*, even assuming a Haitian court was able and willing to render a judgment against a politically-connected individual, which is particularly unlikely, the recovery of a civil damages award in these types of cases is unheard of in Haiti, as discussed *infra* Section II.C. I am unaware of a single case over the past twenty-seven years in which a plaintiff actually collected civil damages in a Haitian court for claims related to political violence.

29. *Fourth*, despite these intractable obstacles, Plaintiffs have nevertheless pursued local remedies with the utmost diligence, utilizing both legal and advocacy mechanisms, with a predictable lack of results, discussed *infra* Section II.D.

30. I make these conclusions with great reluctance but unqualified confidence. Plaintiffs' utter inability to access remedies in Haiti, and to do so safely, is a measure of the failure of decades of determined work by myself and many talented, determined colleagues.

31. *Finally*, Plaintiffs requested that I provide foreign law expertise on Defendant's liability under Haitian law pursuant to Articles 1 and 3 of the Haitian Code of Criminal Procedure and Article 356 of the Haitian Penal Code for intentionally setting fire to

“buildings . . . while they are inhabited or serving residential purposes.”<sup>1</sup> Based on my analysis, I conclude that Defendant would be both criminally and civilly liable under Haitian law for arson in light of the allegations in the Complaint. *See also* Complaint – Fifth Claim for Relief.

**E. Compensation**

32. I am being compensated by Morrison & Foerster, pro bono co-counsel for Plaintiffs, at a rate of \$300 per hour. I will also be reimbursed for reasonable travel and out-of-pocket expenses incurred while fulfilling my role as an expert

33. All opinions I express herein are based on my own independent analysis.

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1. Exhibit D reproduces the relevant Haitian law provisions with my own English translations. Compl. ¶¶ 118-24, Dkt. 1.

## II. EXPERT REPORT FINDINGS

### A. Plaintiffs Have No Meaningful Access to Remedies in Haiti.

1. The Haitian Justice System Suffers from Systemic Weaknesses, Including Politicization and Corruption, Which Largely Foreclose the Availability of Local Remedies for Cases Involving Political Violence.

34. Haiti's legal system functions poorly in general, and particularly poorly with respect to cases involving political violence. A long history of undemocratic government, capped by the thirty-year dictatorship of Francois and Jean-Claude Duvalier (1957-1986) and followed by thirty-six years of democratic openings alternated with turmoil and repression, have left a system unaccustomed to applying the rule of law and unprepared to manage its caseload efficiently.

35. Haiti's legal codes have remained largely unchanged since the early nineteenth century,<sup>2</sup> leaving a procedure ill-adapted to an early twenty-first century caseload.<sup>3</sup> Haiti has not ratified many of the international conventions that could help with the prosecution of human rights cases.<sup>4</sup> The judiciary has little experience with human rights trials or complex cases, and

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2. See Brian Concannon, Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, A View from Haiti*, 32 Colum. Hum. Rts. L. Rev. 201, 210 (2000) (citing Commission Préparatoire à la Réforme du Droit et de la Justice, Ministère de la Justice et de la Sécurité Publique [Preparatory Comm'n for the Reform of L. & Just., Ministry of Just. & Pub. Sec.], Document de Politique Générale [General Policy Document] 2 (2d ed. 1998)).

3. See Brian Concannon, Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, A View from Haiti*, 32 Colum. Hum. Rts. L. Rev. 201, 210 (2000) (citing Commission Préparatoire à la Réforme du Droit et de la Justice, Ministère de la Justice et de la Sécurité Publique [Preparatory Comm'n for the Reform of L. & Just., Ministry of Just. & Pub. Sec.], Document de Politique Générale [General Policy Document] 18 (2d ed. 1998) ("La lenteur de la justice haïtienne est proverbiale." ["The backwardness of Haitian justice is proverbial."])).

4. International instruments to which Haiti is a party are integrated into domestic law. Constitution de la République d'Haïti [Constitution of the Republic of Haiti] art. 276-2. However, Haiti has not acceded to many important human rights instruments, including: 1) the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (signed but not ratified); 2) the Convention on the Non-Applicability of Statutory Limitations to

thus little jurisprudence. In addition, neither the private bar nor the judiciary is equipped or inclined to help human rights victims seek justice.<sup>5</sup>

36. Instead, victims of human rights crimes in Haiti are confronted by a judicial system that is rife with politicization and corruption, which often renders it futile for them to pursue legal claims against the perpetrators.

37. The Haitian judiciary should, in principle, operate as an independent branch of government. In reality, the executive and legislative branch leaders exert significant influence on the justice system. The executive branch nominates judges and decides whether to renew their terms. Members of Parliament typically have influence in this process within their districts, especially if they are allied with the President's political party. Renewal of judges' mandates has long been considered a political process, which results in a judiciary stacked with judges beholden to their political patrons.<sup>6</sup>

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War Crimes and Crimes Against Humanity; and 3) the Inter-American Convention to Prevent and Punish Torture (signed but not ratified).

5. See William G. O'Neill & Elliot Schrage, *Laws. Comm. for Hum. Rts., Paper Laws, Steel Bayonets: Breakdown of the Rule of Law in Haiti* 1 (1990) (stating, before the 1991 coup d'état, that "[t]here is no system of justice in Haiti" and that "[e]ven to speak of a 'Haitian justice system' dignifies the brutal use of force by officers and soldiers, the chaos of Haitian courtrooms and prisons, and the corruption of judges and prosecutors"); Irwin P. Stotzky, *Silencing the Guns in Haiti* 81 (1997) (stating that Haiti's judicial structure is "less developed than that of virtually any nation that has attempted" a democratic transition). See generally William G. O'Neill, *Un besoin prioritaire: reformer la justice en Haïti*, Nat'l Coal. for Haitian Rts. (Mar. 1995), [https://www.nchr.org/nchr/hrp/jud\\_reform\\_fr.htm](https://www.nchr.org/nchr/hrp/jud_reform_fr.htm); Brian Concannon, Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, A View from Haiti*, 32 Colum. Hum. Rts. L. Rev. 201, 209-14 (2000).

6. Réseau Nat'l de Déf. des Droits Humains [Nat'l Hum. Rts. Def. Network], *Fonctionnement de l'appareil judiciaire haïtien au cours de l'année 2018-2019* [Functioning of the Haitian Judiciary During the Year 2018-2019] ¶ 147 (2019), <https://web.rnddh.org/wp-content/uploads/2019/10/4-Rap-Justice-15Oct2019.pdf> ("En effet, les mandats des magistrats qui font généralement montre de professionnalisme et d'indépendance dans le cadre de leur travail ne sont pas renouvelés." ["In effect, the mandates of judges who generally display professionalism and independence in the context of their work are not renewed."]).



38. The executive branch in particular also influences judges by offering special resources for compliant judges. For example, judges are generally not given vehicles by the justice system, and often cannot afford private cars. They are left to take public transportation, which leaves them vulnerable to accidents, common crime and retaliation for their judicial decisions.<sup>7</sup> In some instances, the executive branch will, at its discretion, provide cars, and even security guards to some judges. This support is sometimes connected to a judge handling a particularly dangerous case, but is often connected to a judge's willingness to support the executive branch's agenda. Transportation and security can be a matter of life and death, so having a vehicle can be an important inducement for a judge to support the government.

39. In his deposition, Defendant acknowledged the impact of politics on the justice system: "In Haiti, everything that happens has to stay with politics. And any time that politics is involved in something, it's very difficult for the people to find justice . . . ."<sup>8</sup>

40. Corruption is also endemic in Haiti's justice system. The Haitian judiciary has suffered from chronic under-investment. The salaries of judges and court personnel are so low that many of them must work second jobs and engage in corruption to support even a modest lifestyle for their families.<sup>9</sup>

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7. In April 2007, Hugues St. Pierre, the Chief Judge of the Gonaïves Appeals Court, was killed during a bus trip to the capital where he had been summoned for a meeting on the *La Scierie* case, a prominent political violence case that Judge St. Pierre was handling. Some observers claimed it was an accident, others claimed the incident was intentional and connected to his work; I am not aware of any definitive official determination in the matter.

8. Viliena Dep. 112:21-24, Nov. 1, 2021.

9. Réseau Nat'l de Déf. des Droits Humains [Nat'l Hum. Rts. Def. Network], *Etude sur les conditions générales de travail des composantes de la chaîne pénale haïtienne* [Study of General Working Conditions for the Components of the Haitian Criminal Legal System] ¶¶ 72 & tbl.12, 78, 80 (2019), <https://web.rnddh.org/wp-content/uploads/2019/03/2-Rap-études-sur-les-conditions-de-travail-des-acteurs-de-la-chaine-pénale-21Mar19.pdf> (stating that trial court judges are paid about \$475 to \$550 per month).

41. Corruption, by its nature, is hard to measure, but almost every study of Haiti's justice system I have read identifies pervasive corruption as one of the system's most serious problems. I have had hundreds of conversations about corruption in the Haitian justice system with lawyers, judges, prosecutors, Justice Ministry officials and litigants. Most of those I spoke with confirmed that corruption was pervasive; none that I recall credibly denied it was not.<sup>10</sup>

42. Although corruption in Haiti is pervasive, those involved typically disguise the corruption. One frequent cover-up strategy is planting a procedural flaw in the case that will later be used as a justification for a corrupt decision to dismiss the case. Typically, the seed is planted by an actor a step or two removed from the final decision maker. For example, a prosecutor, clerk or investigating judge will fail to observe a formality, and months later the trial judge will "discover" the formal problem and declare that he or she has no choice but to dismiss the case

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10. Judge Patrick, a justice of the peace I met with regularly and informally in the 1990s, provided a good example of the pervasiveness of corruption in Haiti. Patrick loved being a judge but hated being corrupt. At one of our meetings, Patrick described a hearing he had had that day where he issued a ruling in favor of a locally powerful businessman, even though the law and facts indicated a contrary ruling. The businessman had offered Patrick a bribe. Patrick said he could have passed up the bribe, but if he had ruled against the businessman he would have been attacked. Patrick's salary did not allow him to buy a car, so he walked to work, and his house was well-known, small and not secure against an attack. He felt that he was too vulnerable and could not risk the businessman's ire, so he ruled in his favor, and took the bribe. Although Patrick liked working as a judge, he eventually left the bench and emigrated to work illegally as a house painter abroad, because he felt that he could not perform his judicial duties honestly and survive.

A judge's vulnerability to violence was also illustrated in the case of Investigating Judge Johel Dominique of Jérémie. On March 1, 2005, at 2:00 AM, armed men opened fire on his house with automatic weapons. *Dominique v. Haiti*, Petition 945-05, Inter-Am. Comm'n H.R., Report No. 9/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 ¶ 13 (2007). Judge Dominique reported the attack the next morning to the local justice of the peace and to the Grand'Anse departmental director of the Haitian National Police. *Id.* ¶¶ 14-15. Although the departmental director told Judge Dominique that he "had a good idea of the identities" of the men likely to have been carrying automatic weapons, five months later there had been no reported progress in the investigation. *Id.* ¶¶ 15, 18. Judge Dominique also wrote the Minister of Justice requesting protection for himself and his family, but received no response. *Id.*

because of the flaw. If litigants, journalists or others complain about the planting of the seed, the actors will deny participation or point a finger at someone else until the controversy dies down. There is never an effective investigation, so the victims of the corruption often cannot determine who planted the seed.

43. Another cover-up strategy is losing files or important documents. Case files in Haiti are on paper, and overloaded courthouses rarely have adequate facilities for processing or filing pleadings. I have seen case files piled up on floors and desks, and in lower courts hung on nails driven into the courtroom walls. Case files are regularly lost for non-corrupt reasons, including fires, negligence, natural disasters such as the 2010 earthquake, and flooding from tropical cyclones. The non-corrupt loss of files provides cover for lawyers and officials to remove and/or destroy important documents or entire files. Losing files is particularly common in criminal cases, and the absence is then used to justify a dismissal.<sup>11</sup>

44. A third common corruption cover-up strategy is holding hearings without notifying witnesses or parties, then making decisions based on their absence. The BAI in Haiti has a program representing victims of sexual assault in criminal proceedings. The BAI has handled so many trials where the accused was acquitted after neither the victims nor their

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11. One notorious example occurred in June 2020, when death squad leader Emmanuel Constant, who had been convicted *in absentia* in the Raboteau Massacre trial in 2000, was deported from the United States. Constant's impending deportation had been public knowledge in Haiti for two months, and the Raboteau Massacre judgment had been published in *Le Moniteur*, the Haitian government's official gazette. But shortly after Constant was transferred to the justice system, the prosecutor announced that he had nothing in the file to justify detaining Constant, and would have to release him soon. An international public outcry and plaintiffs' lawyers' rapid delivery of the judgment prevented Constant's release. But such a response is not possible in most cases. Another notorious example is the October 2021 theft of an entire safe from the clerk's office, containing, among other things, all of the files in the investigation into the murder of Monferrier Dorval, a bar association head and government critic assassinated in August 2020.

lawyers were notified, and no evidence was presented, that they now send a lawyer at least once a week to the clerk's office of each court where they have cases to make sure they know when trials will be held in their cases.

45. A fourth common corruption cover-up strategy is making unjustified findings of fact. Hearings in Haiti are recorded by clerks who make a handwritten record of the testimony in French. Almost all of the evidence at a typical trial is oral, usually in Haitian Creole. There is very little written evidence, and almost never any other kind of evidence. The clerks cannot possibly translate and record everything that is said, so they often paraphrase and omit substantial parts of the testimony. Important statements often get lost through this process, or become vague enough for misconstrual. There is usually not an official recording of hearings, so there is no way to prove that the handwritten minutes are inconsistent with the actual testimony. This allows judges—with and without the collaboration of clerks—to make findings of fact inconsistent with the facts that were actually presented by witnesses. Judges can also credit clearly unreliable testimony that contradicts reliable testimony. Appellate courts give trial judges' findings great deference, so it is usually impossible for plaintiffs to challenge corruptly unjustified findings of fact.

46. A fifth common cover-up strategy is simply omitting a defendant or other party's name from a trial notice, decision or other document, in a way that allows them to quietly escape prosecution. This is easier to do in complex cases involving many people.

2. Justice for Victims of Political Violence Is Difficult Within a Supportive Political Context, and Near Impossible in an Unsupportive Context, As Is the Case Here.

47. As detailed above, some of the obstacles to justice for victims of political persecution in Haiti are chronic, and remain regardless of the country's top leadership. But the obstacles to justice can still vary extensively with presidential administrations, with some

measure of justice at times possible, albeit still difficult, under certain presidents, but impossible under others. This dynamic, which is illustrated by the Duvalier and Raboteau Massacre cases, as well as the more recent investigation into the assassination of Haitian President Jovenel Moïse, is relevant to understanding the futility of Plaintiffs' efforts to use local remedies to hold a politically-connected individual such as Defendant accountable.

*i. Illustrative Examples: The Duvalier and Raboteau Massacre Cases*

48. Jean-Claude Duvalier fled Haiti in February 1986. Duvalier had been President since 1972, when he was named to succeed his father Francois. The Duvaliers had ruled over Haiti for thirty years, through brutal repression of political opponents and spectacular corruption. The government that formed after Jean-Claude Duvalier's departure made pursuit of Duvalier for political violence and corruption a top priority. It immediately started assembling the case against him, going through government files, enlisting former and current officials to help. The government invested significant resources in the case, hiring a U.S. law firm and an accounting firm to support the effort. But when General Prosper Avril, a Duvalier ally, took power in a 1988 coup d'état, he shut the case down, refusing to pay the outside firms and making sure the prosecutors dragged their feet.

49. Over the next decade, as Haiti alternated between military regimes and fragile, short-lived democratic governments, the case remained inactive. The government tried to revive it in the late 1990s, with the BAI's help, under the presidency of René Préval. The succeeding democratic government—headed by Jean-Bertrand Aristide—pursued the case but was in turn overthrown by a coup d'état in 2004. The case remained inactive for seven more years.

50. In January 2011, Jean-Claude Duvalier returned to Haiti. The government of President Préval, who had been re-elected in 2006,<sup>12</sup> arrested Duvalier and immediately recommenced his prosecution, inviting both Haitian experts (including my former colleagues at the BAI) and international experts (including me) to support the case. The government dedicated a special room on the National Palace grounds for the case, and appointed top prosecutors to handle it. But three months later, President Michel Martelly, a Duvalier ally, took office, and his prosecutors immediately stopped the prosecution. The prosecutors even convinced the investigating judge to dismiss the case on statute of limitations grounds, even though under international and Haitian law statutes of limitation cannot be applied to crimes against humanity, which Duvalier was charged with. An appeals court subsequently reinstated the charges, but President Martelly's prosecutors successfully delayed the case until Duvalier passed away in 2014.

51. The Raboteau Massacre case's fortunes likewise varied according to political dynamics in Haiti. Raboteau is a neighborhood in the city of Gonaives, which was a bastion of opposition to the 1991-1994 *de facto* military dictatorship. On April 22, 1994, soldiers and paramilitaries attacked the neighborhood, shooting and beating the inhabitants and sacking their houses.

52. The Raboteau Massacre trial took place under the elected Préval administration, which named a special coordinator for the trial, and invested substantial resources in setting up a secure temporary courtroom, providing appropriate detention facilities for high-profile defendants and allocating additional resources to prosecutors and the investigating judges. This

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12. President Préval is still the only Haitian President to be elected, serve his entire term in office and hand power over to an elected successor. He did this twice, 1996-2001, and 2006-2011.

led to a successful trial, which was hailed by observers, including the United Nations, human rights groups and journalists, as fair to victims and the accused alike.

53. But when the successor regime—the Aristide administration—was overthrown in 2004, all of the Raboteau convicts were released the next day. This included the *in absentia* defendants who had been deported from the United States and who had apparently made a strategic decision to wait for regime change. Over the next two years, the unelected government systematically undermined the Raboteau prosecution. On May 3, 2005, the Supreme Court reversed the criminal jury trial convictions on grounds that had not previously been raised in the case, which the Association of the Bar of the City of New York called “politically-motivated” and “unconstitutional,”<sup>13</sup> and Amnesty International called “contrary to the Haitian constitution.”<sup>14</sup> Several defendants obtained illegal court certificates that purported to exonerate them.

ii. *A Recent Example: The Investigation into the July 7, 2021 Assassination of President Jovenel Moïse*

54. More recently, the ongoing investigation into the July 7, 2021 assassination of Haiti’s President Jovenel Moïse likewise illustrates the continuing challenges of pursuing justice for political violence in Haiti, even under what should be a supportive context. Even though President Moïse’s protection was the focal point of three police units with over 600 officers, he was assassinated at home with only very limited efforts by police to stop the killing. The assailants were able to pass through three checkpoints on the road into the President’s

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13. Letter from Bettina B. Plevan, President, Ass’n of Bar of City of N.Y., to Gérard Latortue, Minister of the Interior & Territorial Collectives, & Henri Dorléans, Minister Just. & Pub. Sec. 2 (Aug. 12, 2005).

14. Public Statement, Amnesty Int’l, Haiti: Obliterating Justice, Overturning of Sentences for Raboteau Massacre by Supreme Court Is a Huge Step Backwards (May 26, 2005), <https://www.amnesty.org/ar/wp-content/uploads/2021/08/amr360062005en.pdf>.

compound. The attackers entered Moïse's residence, searched through his belongings, gathered substantial amounts of money and papers, and shot him twelve times. According to reports, President Moïse had the time to call multiple police leaders between the time he became aware of the assault and his death. But according to reports, the attackers only faced limited police fire before the killing, and no police reinforcements arrived until the attack was over.

55. Reportedly, no police officers were injured but at least 20 officers have been arrested. Although President Moïse appointed the police leadership and cultivated personal loyalty among the officers, the police have impeded the investigation into his killing. For example, they prevented the local justice of the peace from accessing the scene, refused to turn over the list of security personnel on duty for at least two days, and prevented judicial officials from interviewing guards who were on duty that night for at least two weeks. The police also allowed evidence to be destroyed or left uncollected. Corpses of suspects who were subsequently killed were moved before investigators could document them. At least two vehicles driven by suspects were burned. Sources report that FBI agents who visited President Moïse's residence days after the killing were surprised to find an abundance of uncollected evidence there.

56. Even though prior to his death President Moïse appointed the head prosecutor in the case and established substantial influence within the judiciary, the judicial investigation into his killing has gone poorly to date. In serious cases such as murder, the head prosecutor would typically turn the file quickly over to an investigating judge so that they could undertake the investigation. In this case, however, the head prosecutor delayed transferring the file for almost a month. That investigative judge resigned a few days later after his clerk was killed and his request for a vehicle and security from the government was denied.



57. A second investigating judge, Judge Garry Orélien was appointed on August 25, 2021, but made no apparent progress in the case. The RNDDH human rights organization accused Judge Orélien of freeing police officers arrested in the case in return for a \$25,000 bribe. The judge reportedly asked other people for \$50,000 in return for dropping arrest warrants against them. On January 18, 2022, the Chief Judge of Port-au-Prince announced that Judge Orélien had been taken off the case. No replacement for Judge Orélien has been publicly announced.

58. In addition, Prime Minister Ariel Henry fired the head prosecutor, after the prosecutor discovered telephone records linking Henry to one of the principal orchestrators of the attack on President Moïse and called for an investigation of Henry's potential involvement in the attack.

*iii. Plaintiffs' Efforts at Legal Accountability Are Futile Given the Political Context.*

59. Plaintiffs filed complaints and reports with the relevant Haitian authorities following the 2007 death of Ecclesiaste Boniface, the 2008 radio station attack, and the 2009 mass arson in Les Irois. While legal proceedings against then-Mayor Viliena and his associates made some limited initial progress, as discussed *infra* Section II.D, they have since generally languished, particularly once the administration of President Michel Martelly came into power in 2011.

60. For the past decade, a party that is now called the *Partie Haitienne Tet Kale* ("PHTK") has ruled Haiti, under PHTK's founder President Michel Martelly (2011-2016), President Moïse (2017-2021) and the current interim government. The PHTK party has a record of both support for Defendant and opposition to efforts by victims of political violence to seek justice, which rendered Plaintiffs' efforts to pursue local remedies futile.

61. President Michel Martelly served as President of Haiti from 2011 to 2016. He is a singer and had not previously held public office but is considered to be on the right of Haiti's political spectrum. President Martelly called his political movement the *Mouvman Tet Kale* (Bald-Headed Movement or MTK). President Martelly created PHTK as a new political party for the 2015/2016 electoral cycle. Haiti's constitution allows Presidents to serve two five-year terms, but not consecutively, so Martelly chose Jovenel Moïse to run under the PHTK banner. Moïse had also never held public office, but came to prominence running Agritrans, a banana export company that was financed by the Martelly administration and promoted as a model of development by the administration. Soon after Moïse was nominated for the presidency, Agritrans stopped producing bananas.

62. Moïse was successful in the 2015/2016 elections and was President from February 2017 until his July 7, 2021 assassination. PHTK, with its allies, controlled a majority in both houses of Parliament from February 2017 until January 2020. At that point, the terms of most members of Parliament expired without the government having held elections for their successors and President Moïse ruled without any legislative oversight or a constitutional government, through governments led by a series of interim Prime Ministers, until his death.<sup>15</sup>

63. The Martelly and Moïse administrations were particularly unreceptive to people seeking justice for political violence, especially to people perceived of as coming from the left

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15. As of January 31, 2022, Haiti has been without a President following President Moïse's July 7, 2021 assassination. The government is run by Interim Prime Minister Ariel Henry, a former minister under President Martelly who was nominated as Prime Minister by President Moïse before his assassination. Henry's government is dominated by ministers who also served under the PHTK presidents.

side of Haiti's political spectrum.<sup>16</sup> I cannot recall a single prosecution for political violence under either administration.

64. Instead, both administrations incorporated high-profile individuals convicted of human rights atrocities. The Martelly Administration appointed Nady Cariétane, a former soldier sentenced to life for murder at the Raboteau Massacre trial, to serve in the National Palace security force. Cariétane was a candidate for Parliament with a Martelly-allied party in 2015, and later a driver for President Moïse. In June 2020, journalist Louis-Jamé Mécène reported that Cariétane had threatened him after Mécène reported on Cariétane's abuse of power. For its part, the Moïse Administration appointed Raboteau Massacre convict Jean-Robert Gabriel to the military high command.

65. All Haitian administrations have placed their allies in the justice system, but the Martelly and Moïse administrations were particularly aggressive and successful at doing so. Prosecutors are political appointees, but judges are nominated through a process that, if followed, would provide some insulation from political influence.<sup>17</sup> The Martelly and Moïse

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16. *See, e.g.*, Harvard Law School International Human Rights Clinic & Observatoire Haïtien des crimes contre l'humanité [Haitian Observatory of Crimes Against Humanity], *Killing with Impunity: State-Sanctioned Massacres in Haiti 3-5* (2021), [http://hrp.law.harvard.edu/wp-content/uploads/2021/04/Killing\\_With\\_Impunity-1.pdf](http://hrp.law.harvard.edu/wp-content/uploads/2021/04/Killing_With_Impunity-1.pdf) (concluding that three attacks against civilians and opponents of the Moïse administration by government-linked gangs since 2018, including the November 2018 La Saline Massacre, and the systematic refusal to pursue those responsible constituted crimes against humanity).

17. Article 175 of the Constitution of Haiti reads: "The judges of the Supreme Court are nominated by the President of the Republic from a list of three (3) people per seat submitted by the Senate. Those of the Court of Appeals and the trial courts are named from a list submitted by the concerned Departmental Assembly, the justices of the peace from a list prepared by the Communal Assemblies." *Constitution de la République d'Haïti* [Constitution of the Republic of Haiti] art. 175 (author's translation). None of the Senate, Departmental Assemblies or Communal Assemblies are operational.

administrations regularly circumvented the official process, and declined or delayed the term renewals of sitting judges, as a way of increasing the executive branch's influence.<sup>18</sup>

66. The PHTK governments have also pushed out members of the justice system that they consider politically unreliable. In 2012, President Martelly illegally placed three justices on the *Cour de Cassation*, Haiti's Supreme Court, including the Chief Justice. Similarly, on February 7, 2021, President Moïse forced three members of the *Cour de Cassation* into retirement. This maneuver was exactly as unconstitutional in Haiti as it would be if a U.S. President forced three Supreme Court justices out of office.

67. The PHTK governments also exercise undue influence over the judiciary by refusing to reappoint judges when their terms expire, without cause. This practice eliminates judges who do not accept government influence and gives judges who want to continue their service a strong incentive to serve the interests of PHTK and the ruling government. The practice undermines the whole court system. On September 10, 2018, the *Conseil Supérieure du Pouvoir Judiciaire* ("High Council for the Judicial Branch") ("CSPJ"), the justice system's oversight mechanism, wrote President Moïse to complain that his government's failure to fill judicial vacancies resulted in "the total dysfunction of the justice system in nearly all jurisdictions."<sup>19</sup>

68. PHTK's continued grip on the judiciary and the corresponding lack of accountability for those aligned with the party has been acknowledged by the U.S. government.

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18. A concrete example of the current ruling party's use of judicial appointments to influence cases is the appointment of Judge Lamarre Bélizaire, who was named to the bench by the Martelly administration in July 2012, even though he failed to fulfill many of the official qualifications for the position. Judge Bélizaire was systematically assigned to cases that affected the Martelly regime's political interests, and he systematically acted to advance those interests even when the law and the facts would have compelled a different decision.

19. *Le CSPJ écrit au Président de la République* [*The CSPJ Writes to the President of the Republic*], *Le Nouvelliste* (Sept. 11, 2018), <https://lenouvelliste.com/article/192483/le-cspj-ecrit-au-president-de-la-republique> (author's translation).

On December 10, 2020, the U.S. Treasury issued sanctions against three Haitians associated with PHTK, noting:

Widespread violence and growing criminality by armed gangs in Haiti is bolstered by a judiciary that does not prosecute those responsible for attacks on civilians. These gangs, with the support of some Haitian politicians, repress political dissent in Port-au-Prince neighborhoods known to participate in anti-government demonstrations.<sup>20</sup>

69. In light of this broader context, it is unsurprising that Defendant's political affiliations would insulate him from legal accountability.

70. On September 29, 2008, Defendant was arrested upon the order of Investigating Judge Frank Drice.<sup>21</sup> In response to the arrest, a delegation of prominent people, including a high-level Ministry of the Interior official, four mayors and a member of Parliament visited Jérémie and Les Irois on October 17 and 18, and spoke with local elected officials including the mayors of Jérémie and Dame Marie and the Assistant Mayor of Les Irois, judicial officials including the Chief Judge of the Jérémie Trial Court, the Chief Prosecutor in Jérémie and the Justice of the Peace in Les Irois, the UN peacekeeping mission, officers from the Haitian National Police headquarters in Jérémie and a crowd of demonstrators calling for Defendant's release.<sup>22</sup>

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20. Press Release, U.S. Dep't of the Treasury, Treasury Sanctions Serious Human Rights Abusers on International Human Rights Day (Dec. 10, 2020), <https://home.treasury.gov/news/press-releases/sm1208>.

21. See Concluding Order of Indictment, No. 736/08 (Ct. First Instance Jérémie Jan. 25, 2010) [Plaintiffs\_0000090-99], at Plaintiffs\_0000090-92; E-mail from Jean Morose Viliena to Peter Haley (Jan. 19, 2021, 5:50 PM) [Viliena Second Supp Production 000041-47], at Viliena Second Supp Production 000043; Urgent Action, Amnesty Int'l, David Boniface (m), Aged 27; His Family (Oct. 27, 2008), <https://www.amnesty.org/en/wp-content/uploads/2021/06/amr360052008en.pdf> [Plaintiffs\_0000038-39].

22. Letter from Nat'l Leadership Conf. of Haitian Mayors to Paul Antoine Bien-Aimé, Minister of the Interior & Territorial Collectives (Oct. 27, 2008) [VIL0022-25, VIL0037-39], at VIL0022-23, VIL0037-38.

71. The National Leadership Conference of Haitian Mayors submitted a delegation report from the visit to Paul Antoine Bien-Aimé, Haiti's Interior Minister.<sup>23</sup> The report noted that two mayors in the delegation promised the “desperate” crowd at the demonstration that they should return to their homes without doing violence, and that Defendant would soon be released.<sup>24</sup> This account indicates that there was substantial pressure, including widespread political pressure and the threat of more violence from Defendant's supporters, on Judge Drice. Soon thereafter, Defendant was released from detention,<sup>25</sup> and appears to have fled to the United States.<sup>26</sup>

72. According to Defendant's passport stamps, he largely remained in the United States until August 2012,<sup>27</sup> when President Martelly appointed Defendant interim mayor via presidential decree, which provided him immense protection. At the time, Defendant was still facing charges in ongoing criminal cases, including the murder of Ecclesiaste Boniface and the radio station attack. Naming him mayor despite serious outstanding charges of lethal misuse of his official powers was a strong signal—to the courts, the police, the people of Les Irois, Plaintiffs, and Defendant himself—that the government would stand by him, regardless of any

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23. Letter from Nat'l Leadership Conf. of Haitian Mayors to Paul Antoine Bien-Aimé, Minister of the Interior & Territorial Collectives (Oct. 27, 2008) [VIL0022-25, VIL0037-39].

24. Letter from Nat'l Leadership Conf. of Haitian Mayors to Paul Antoine Bien-Aimé, Minister of the Interior & Territorial Collectives (Oct. 27, 2008) [VIL0022-25, VIL0037-39], at VIL0038 (author's translation).

25. *See* Concluding Order of Indictment, No. 736/08 (Ct. First Instance Jérémie Jan. 25, 2010) [Plaintiffs\_0000090-99], at Plaintiffs\_0000092.

26. *See* Pages from Passport No. 1803587 of Jean Morose Viliena [Viliena Fourth Supp Production 000002-05], at Viliena Fourth Supp Production 000002, Viliena Fourth Supp Production 000005.

27. Pages from Passport No. 1803587 of Jean Morose Viliena [Viliena Fourth Supp Production 000002-05], at Viliena Fourth Supp Production 000002, Viliena Fourth Supp Production 000005.

pending charges. Following his appointment as interim mayor, Defendant started to return frequently to Haiti, even if he remained principally based in the United States, according to his travel documents.<sup>28</sup>

**B. Plaintiffs, Like Others Seeking Justice in Haiti for Acts of Political Violence, Face Retributive Violence.**

1. Intimidation and Violence Are Routinely Used to Thwart Judicial Proceedings.

73. Seeking justice for politically-motivated attacks in Haiti is not just difficult and frustrating, it can be dangerous as well. Threats and acts of violent retaliation are routinely used against plaintiffs and potential witnesses to thwart judicial proceedings related to political violence.

74. I experienced this firsthand in the early 2000s, in a BAI case involving a December 1993 large-scale arson and massacre in the Cité Soleil neighborhood of Port-au-Prince. One of the principal targets in the case was Fritz Joseph, who had been appointed the Mayor of Cité Soleil while we were working on the case. Mayor Joseph had been named by multiple witnesses to the massacre, in the formal complaints, and in the investigating judge's

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28. Pages from Passport No. 1803587 of Jean Morose Viliena [Viliena Fourth Supp Production 000002-05]; Pages from Passport No. 3091474 of Jean Morose Viliena [Viliena Fourth Supp Production 000006-12], at Viliena Fourth Supp Production 000006-07; *see also* E-mail from Ralph Theano to Jean Morose Viliena (Aug. 19, 2012, 12:40 AM) [Viliena Second Supp Production 000078-79] (replying to Viliena's message forwarding itinerary of flights from Boston to Miami to Port-au-Prince); E-mail from Delta Air Lines to Jean Morose Viliena (May 28, 2013, 6:04 AM) [Viliena Second Supp Production 000054-55]; E-mail from American Airlines to Jean Morose Viliena (Sept. 25, 2013, 3:59 PM) [Viliena Second Supp Production 000100-01]; E-mail from Jean Morose Viliena to twidy509@yahoo.com (Jan. 1, 2014, 11:04 AM) [Viliena Second Supp Production 000035-38] (forwarding itinerary of flights from Boston to Miami to Port-au-Prince); E-mail from American Airlines to Jean Morose Viliena (May 30, 2014, 1:26 PM) [Viliena Second Supp Production 000011-13]; E-mail from Delta Air Lines to Jean Morose Viliena (Aug. 13, 2014, 10:42 PM) [Viliena Second Supp Production 000056-60]; E-mail from CheapTickets Traveler Care to Jean Morose Viliena (Dec. 13, 2014, 2:47 AM) [Viliena Second Supp Production 000014-17].

report on the case. But, to our surprise, when the prosecutor issued his charging document, Mayor Joseph's name did not appear. I went with one of the plaintiffs in the case, a man named Milliona, to the prosecutor's office to ask why he had omitted Mayor Joseph's name. We spoke with an assistant, but the prosecutor would not see us that day. That evening, Milliona was executed outside his house by an unknown assassin. There was never any investigation of the killing, but Milliona's family and friends, and the police, were convinced that Milliona was killed by a gang leader named Colibri, and that the killing was ordered by Mayor Joseph in response to Milliona's advocacy.

75. The Raboteau Massacre victims, and even the judicial officials involved in the case, also faced attacks. On or about January 1, 2004, several of the plaintiffs in the case had their houses attacked, one burned to the ground. A few weeks later, when rebels took the city just before Haiti's February 29, 2004, coup d'état, another plaintiff was executed near the police station. The chief prosecutor in the case, Frenot Cajuste, had his law office and small radio station burned down about the same time in the city of St. Marc. A few days after the coup, Napela Saintil, the judge who presided at the trial, was beaten by thugs. Rony Paul, a Raboteau resident who had supported our legal team, faced a series of threats over the next two years. All of these people reported that the attacks were in retaliation for their work pursuing justice in the Raboteau Massacre case.

76. A similar pattern has continued under the Martelly and Moïse administrations.

77. On September 22, 2011—five months after President Martelly's inauguration—Amnesty International held a press conference at a hotel in Port-au-Prince, to present its report urging pursuit of the Duvalier case. Amnesty also invited plaintiffs in the Haitian case against Duvalier and their lawyers to provide their perspective to the press. Before the event could begin,



dozens of Duvalier supporters, including their lawyer, barged into the conference room, and shouted down the participants. This intimidated many of those present, including the plaintiffs, their lawyers, and journalists. The press conference was shut down immediately to avoid harm to the plaintiffs.

78. On April 17, 2012, Police Officer Walky Calixte, who worked in the Haitian National Police's traffic unit, found an illegal weapon in a car belonging to Rodriguez Séjour, a member of Haiti's House of Deputies and an ally of President Martelly. Officer Calixte arrested a Séjour bodyguard who had the weapon and who told Calixte that he was making a big mistake arresting him. Deputy Séjour went to the police station to demand the bodyguard's release, and when the police refused, threatened to kill them.

79. Later that day, the bodyguard was released by order of the Minister of Justice. He and a local gang allied with the ruling PHTK party hunted down Officer Calixte and killed him. Marcelin Jevousaime, an officer from Calixte's unit who witnessed the confrontation with Deputy Séjour's team, was ambushed and shot three times on March 22, 2013, three days before he was scheduled to testify before the pre-trial investigation in the case. Officer Jevousaime survived the attack. On May 2, 2013, Officer Jean Cayo, another Calixte colleague and witness to the confrontation, was shot and killed in Carrefour-Feuilles, near Martissant. He too was scheduled to provide testimony to the judge investigating the case, Judge Wilner Morin. On February 12, 2016, a third member of Officer Calixte's unit, Officer David Dumé, was ambushed by several armed men and killed while he was in uniform and on duty in Martissant wearing a bullet-proof vest.

80. Judge Morin eventually charged Deputy Séjour and several of his associates. But the House of Deputies refused to lift Séjour's immunity. Although he subsequently left Parliament, Séjour has never been arrested.

81. In January 2014, I observed a hearing regarding accusations of rape against Josué Pierre-Louis, who had served as Minister of Justice under President Martelly, and was at the time the Martelly-appointed President of the Electoral Council. Pierre-Louis's accuser—his assistant at his electoral position—had complained of receiving telephone and other threats after she filed her complaint. At the hearing I observed, a group of men—perhaps about twenty in all—came into the courthouse yelling their support for Pierre-Louis and making threatening gestures. They made it into the courtroom where the hearing was about to start, and interrupted the process. The judge hastily adjourned the hearing and left the courtroom. Police did not try to disperse the demonstration in the courthouse and to my knowledge made no arrests. A few days later, the accuser announced that she was dropping the case because her pursuit of justice was putting her family in too much danger.

82. The government protected Pierre-Louis by giving him a position in Haiti's embassy in Belgium. But Belgium would not accept Pierre-Louis as Ambassador, so he returned in January 2015 and was named the Chief of Staff of the Prime Minister's office. In January 2017, President Moïse appointed Pierre-Louis head of the Haitian Government's Human Resources Management Office, and he held that post until March 2020. On September 16, 2021, Mr. Pierre-Louis was appointed the General Secretary of Haiti's Council of Ministers, a prominent and influential executive branch position. He replaced Renald Lubrice, who resigned to protest Prime Minister Henry's apparent connection to the assassination of President Moïse.

2. Perceived Political Dissidents, Including Those Who Seek Accountability for Human Rights Crimes, Face Additional Risks to Their Safety.

83. Both the Martelly and Moïse administrations have been intolerant of political dissidents, especially those advocating for increased accountability of the administrations and their allies. This intolerance has manifested itself in many ways, including threats, beatings, illegal arrests and even killings. The attacks have targeted grassroots advocates, human rights groups, journalists and members of opposing political parties. The attacks have increased sharply over the past few years as Haiti has descended into a deep political crisis.

84. President Martelly regularly deployed thugs. One example, Ronald “Roro” Nelson, is well known as a close associate of President Martelly. Nelson was convicted of felony assault with a deadly weapon in a Massachusetts court in 2011. He never held any publicly-known official position, but he regularly accompanied President Martelly when he traveled within Haiti, and pursued those he considered opponents of the regime. Nelson has been implicated in a number of violent assaults, some of which appear to have had political motivations. For example, on August 31, 2011, Nelson physically assaulted Patrick Joseph, a Member of Parliament, for refusing to applaud after a speech by President Martelly. According to one report, President Martelly, who was present, warned Joseph not to upset Nelson if he did not want to be strangled.

85. On June 22, 2011, Ernest Joseph and Wolf “Duralph” François, hosts of the radio show “They Said It” on *Radio Prévention* in Petit-Goâve, were arrested and imprisoned on charges of defamation, disturbing public order, and destruction of public property. The arrests followed criticism from the town’s mayor and other officials about their coverage. Francois and Joseph spent almost a month in prison.

86. In March 2012, Wendy Phelé, a journalist for *Radio Télé Zénith*, was shot by the bodyguard of a Martelly appointee mayor while attending one of his public speeches. The mayor refused to allow the arrest of his bodyguard. Phelé and other journalists at *Radio Télé Zénith* received death threats after the attack, and the station later announced that Phelé was forced to flee to France.

87. On January 5, 2013, a group of men armed with rocks and clubs disrupted a meeting of the political opposition in the city of Arcahaie. The attackers reportedly identified themselves as supporters of the Martelly regime, but the government denied any association. The attackers first forcibly marched into the meeting, then went outside and threw rocks at the building hosting the meeting. One of the meeting participants was injured. When the participants called the local police station for help, they were told that the police could not send any officers to help because they did not have enough gas. Not having gas is a frequently-invoked excuse for police inaction in Haiti. Later, a patrol was sent from Port-au-Prince to escort the participants safely home, but the meeting was not able to continue.

88. On February 12, 2013, government security guards reportedly beat journalists Watson Phanor and Etzer César while they were covering Haiti's Carnival in Cap-Haïtien. The guards reportedly accused the two journalists of being in contact with a senator who was critical of the government and of disseminating false reports about alleged beatings during Carnival.

89. On November 10, 2014, Gerdy Jérémie, a journalist with the Haitian Press Association, which was often critical of the government, and *Radio Télé Express* in the city of Jacmel, was brutally beaten by two police officers, Alex Céus and Daniel Erickson Jean, while

he was covering a protest against the government's price increase for motorcycle license plates.

90. In January 2015, President Martelly issued a Carnival song titled "*Bal Bannan nan*" ("Give Her the Banana"), a lewd, harassing song targeting Liliane Pierre-Paul, a well-known radio journalist. *Radio Kiskeya*, where Pierre-Paul works, was previously the target of an attack by unidentified gunmen, shortly after Martelly denounced the journalist and her radio station for its critical coverage of his regime.

91. On July 29, 2015, President Martelly participated in a political rally for his party, PHTK, in Miragoâne, Haiti. When a woman in the audience audibly protested his policies, President Martelly threatened to have sex with her on the stage, and then said he would have broken her jaw if he was not the President.

92. A series of controversial, and violent, elections took place in 2015 and 2016 for almost every directly-elected office in Haiti. The PHTK party and its allies were responsible for most of the violence, and in the end won the most elected positions, including the presidency, which was won by Jovenel Moïse.

93. There was substantial violence in the lead-up to the August 9, 2015, first round of elections, perpetrated by armed groups connected with candidates, political parties, or the government. Election day itself featured widespread violence, mostly inflicted by political party supporters against opposing supporters, electoral officials, and potential voters. Violence by political thugs forced the closure of thirteen percent of the country's voting centers. Twenty-three percent of local tally sheets were destroyed before they could reach the national voting center where they could be counted. Throughout the country, groups of thugs grabbed ballot-filled boxes from voting centers in their opponents' strongholds, and destroyed them.

Throughout the country, police stood by as the violence raged, or refused to come when summoned.

94. The Electoral Council determined that PHTK and other parties associated with the government were principally responsible for the violence. The police systematically failed to intervene to stop violence on election day, and almost no one was arrested or prosecuted for the attacks.

95. Violence by thugs affiliated with PHTK and President Moïse increased throughout his presidency, as he confronted an increasing call for accountability for government corruption and violence.<sup>29</sup>

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96. As these examples demonstrate, individuals who try to advance accountability for politically-motivated violence do so at great personal risk. Plaintiffs and witnesses in these cases are frequently targets of intimidation, harassment, and violence either to deter them from participating in cases and pursuing accountability, or as retribution because they have attempted to do so. Perceived political dissidents face particularly acute risks if they attempt to pursue accountability.

97. Plaintiffs' account of the violence inflicted on them, potential witnesses, and their friends and families, as a result of their efforts to pursue justice against Defendant is highly

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29. These include the March 14, 2018 forced disappearance of investigative journalist Vladimir Legagneur, the October 17, 2018 police shooting of demonstrators, the November 2018 La Saline massacre, the June 10, 2019 murder of journalist Rospide Pétion, the October 10, 2019 murder of journalist Néhémie Joseph, the November 2019 attacks on the neighborhood of Bel-Air that resulted in the deaths of at least fifteen people and the burning of twenty-one houses, the April 28, 2020 beating of journalist Georges Emmanuel Allen, the May 24, 2020 attack in Pont-Rouge, the repression of peaceful demonstrators on June 29 and July 6, 2020, and the August 29, 2020 murder of Monferrier Dorval, a law professor and the head of the Port-au-Prince Bar Association, following his critical comments on the Moïse administration.

consistent with violence perpetrated against others seeking justice for politically-motivated violence in Haiti, especially under the Martelly and Moïse administrations. The history of the attacks—from the original killing of Ecclesiaste Boniface, itself a retaliation for David Boniface’s efforts to engage the justice system in a political violence case, the intimidation of the witnesses who testified during the criminal cases in Haiti,<sup>30</sup> up through the continuing threats and attacks against Plaintiffs as they pursue the case in the United States and the potential witnesses in that case,<sup>31</sup> is long and persistent. The types of attacks—threats, simple assaults, arsons and killings—are documented in other cases. And the result—preventing the advance of the judicial proceedings—is the same.

**C. Even When Legal Proceedings Related to Political Violence Progress to a Judgment, Which They Rarely Do, the Recovery of a Civil Damages Award Is Nonexistent.**

98. In the very rare instances where victims of political violence have been able to overcome the politicization and corruption endemic in the Haitian justice system, as well as retributive violence, to actually obtain a judgment, they have not been able to actually collect on that judgment. In my experience, orders for civil damages in political violence cases are hard to obtain, but close to impossible to collect. I cannot recall a single case over the past twenty-seven years in which a plaintiff obtained civil damages for political violence in a Haitian court.

99. The Haitian legal system, like the French system it was modeled on, allows persons claiming injury from a tort that was also a criminal act to piggy-back their civil claim onto a criminal proceeding through the *partie civile* or “civil party” procedure. *Partie civile* plaintiffs may officially assert a civil claim before the investigating judge, prosecutor or trial

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30. See, e.g., Laguerre Dep. 25:2-27:15.

31. See Compl. ¶¶ 1-3, 29-64, Dkt. 1; Ysemé Decl. ¶¶ 4-17, Dkt. 105.

court.<sup>32</sup> *Partie civile* plaintiffs are allowed to defend their civil interests at the trial itself, in appeals and pre-trial proceedings. *Partie civile* plaintiffs are allowed to introduce or question evidence and make arguments of law relevant to their civil interests. Following a verdict, including an *in absentia* verdict, the *partie civile* plaintiffs present their claim for damages to the judge, who rules on both liability and damages.<sup>33</sup>

100. I have been involved with two prominent cases that managed to overcome the hurdles and obtain civil judgments that should have been enforceable in Haitian courts. One of them was for millions of dollars. But not a penny was collected in either of them through Haitian proceedings.

101. On November 16, 2000, the Trial Court of Gonaïves issued a civil judgment in the Raboteau Massacre case, ordering fifty-two defendants to pay 1 billion gourdes (\$34 million at the time) in civil damages to over 100 victims. My colleagues at the BAI represented the victims, and worked diligently to execute the judgment. They served the papers on the defendants and filed liens on their property, which collectively required tens of thousands of dollars in process and filing fees. The lawyers worked diligently for three years to collect on the judgment, but at every step of the way they were blocked. Prosecutors, judges and other officials repeatedly dragged their feet. Files were lost.

102. As discussed above, when the Aristide regime was ousted in a February 2004 coup d'état, all the individuals serving jail sentences for the Raboteau Massacre were released and their convictions were reversed in a decision that has been characterized as “politically-motivated,” “unconstitutional,” and “contrary to the Haitian constitution.”<sup>34</sup>

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32. Code d’Instruction Criminelle [Code of Criminal Procedure] arts. 50, 54.

33. Code d’Instruction Criminelle [Code of Criminal Procedure] arts. 294, 371.

34. *See supra* para. 53; *see also* Letter from Bettina B. Plevan, President, Ass’n of Bar of



103. Thirty-seven of the Raboteau Massacre defendants were convicted *in absentia* and were among those found liable in the civil judgment. Three were former members of the military high command who had been deported from the United States before the 2004 coup d'état. They had been arrested upon arrival in Haiti, and to our surprise never invoked their right to a new trial. In retrospect, we are confident that they decided it was better to wait in prison for the next coup d'état than to face a fair trial. The generals were never re-arrested. One of their former colleagues on the high command, Jean-Robert Gabriel, was also convicted *in absentia*. He was never arrested, and in 2020 was appointed to the new military high command, where he still serves.

104. U.S. lawyers for over 100 Raboteau victims were able to recover about \$400,000 from one of the defendants, Colonel Carl Dorélien, through a U.S. court proceeding. No Haitian courts were involved in the process at any time after the November 2000 civil judgment. Dorélien had fled to the United States in 1995, and subsequently won a generous Florida lottery jackpot. The U.S. lawyers recovered a portion of the lottery proceeds through a combination of enforcing the Raboteau Massacre judgment in Florida state court and an Alien Tort Statute judgment in U.S. federal court. They disbursed proceeds to the victims in 2008.

105. In another case, a judgment would have been easy to collect, but the justice system refused to issue a judgment even though the defendant would almost certainly have defaulted. In the early 2000s, the Haitian government asked the BAI to help collect \$7 million that had been seized in Switzerland from the accounts of former President Jean-Claude “Baby

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City of N.Y., to Gérard Latortue, Minister of the Interior & Territorial Collectives, & Henri Dorléans, Minister Just. & Pub. Sec. 2 (Aug. 12, 2005); Public Statement, Amnesty Int'l, Haiti: Obliterating Justice, Overturning of Sentences for Raboteau Massacre by Supreme Court Is a Huge Step Backwards (May 26, 2005), <https://www.amnesty.org/ar/wp-content/uploads/2021/08/amr360062005en.pdf>.

Doc” Duvalier (1972-1986). Haiti desperately needed the money, and Switzerland, which had been holding the money for over a decade, wanted to send it to Haiti quickly because Duvalier’s lawyers were trying to recover it.

106. Switzerland required only a final judgment from a Haitian court against Duvalier. Haitian courts had previously started proceedings. Because Duvalier would not appear in Haiti, the proceedings would have been unopposed, and the judgment would have been a default and likely not subject to appeal.

107. When we started working on the case, the Haitian proceedings had already generated almost everything the system needed to issue a default judgment, including affidavits from government ministers detailing over \$500 million stolen by Duvalier, backed up by documentation—including cancelled checks and government records—prepared by a U.S. accounting firm. All the case needed was some short documents from the prosecutor—which the BAI was willing to help draft—and for a judge to review the evidence and issue a judgment. We met with the Chief Prosecutor of Port-au-Prince, who said he was eager to collaborate with us on the case and agreed it should not require extensive work. But the prosecutor never filed a single document in the case, even after Haiti’s President personally called him to urge him to complete the work.

108. Our conclusion from working on the case was that the substantial advantages for the prosecutor to do his work on the Duvalier case—advancing justice, obtaining a significant recovery for the government, pleasing the President—were outweighed by the perceived risk of angering Jean-Claude Duvalier—at that time absent for fifteen years—or his supporters.

109. Despite regular private and public entreaties from Switzerland over the following years to governments that covered a wide range of Haiti's political spectrum, the judgment against Duvalier was never issued. As of 2021 the money was still in Switzerland.

110. In May 2008, the Inter-American Court of Human Rights issued a decision awarding former Prime Minister Yvon Neptune \$95,000 in damages for his illegal, politically-motivated detention from 2004 to 2006. The Inter-American Court's judgments are binding on Haiti as a state party to the American Convention on Human Rights, and are as enforceable as a domestic court judgment. But twelve years later, Mr. Neptune has still not been able to collect a penny of this judgment.

111. Here, Plaintiffs' civil claims in Haiti against Defendant have languished along with the criminal case to which they are coupled. Following Defendant's arrest and release in Haiti in late 2008, he fled to the United States. As of March 2017, when the Complaint in this suit was filed, there is no record that Defendant had engaged with the Haitian proceedings despite the indictments against him for the killing of Ecclesiaste and the radio station attack.

112. Haitian legal proceedings for these crimes continued against five in-person, less high-profile defendants who remained in Haiti. In July 2015, the trial court in Les Cayes found the five individuals responsible for the killing of Ecclesiaste Boniface and the attack on the radio station, and sentenced them to seven years' imprisonment.<sup>35</sup> The court also assessed a total of 3 million gourdes (\$53,500) in civil damages against them.<sup>36</sup> To my knowledge, despite the judgment, Plaintiffs have never been able to recover any of these awarded funds, which is

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35. Joseph Decl., Dkt. 20-1, Ex. C (July 21, 2015, Les Cayes Court of First Instance judgment).

36. Joseph Decl., Dkt. 20-1, Ex. C (July 21, 2015, Les Cayes Court of First Instance judgment).

unsurprising given the Haitian context outlined above. In its July 2015 judgment, the Les Cayes trial court declared that the “fugitive” defendants, including Defendant, could be tried *in absentia*.<sup>37</sup> To my knowledge, no such proceedings were initiated against Defendant.

113. Nor does it appear that proceedings against Defendant were ever initiated for his role in the mass arsons in Les Irois.

**D. Despite These Intractable Obstacles, Plaintiffs Have Diligently Pursued Justice in Haiti, With a Predictable Lack of Results.**

114. I have participated in most of the significant efforts to seek justice for large-scale politically-motivated violence in Haitian courts over the last twenty-six years. With the possible exception of the victims of the Raboteau Massacre, I am not aware of any victims of human rights violations in Haiti who have worked with more persistence than Plaintiffs to obtain justice. They have pursued a broad range of initiatives within the formal justice system, with the local justice of the peace, two trial courts and the Supreme Court.

115. Plaintiffs have likewise persistently attempted to advocate for their cause outside the Haitian legal proceedings, including: applying international pressure by collaborating with Amnesty International to issue an urgent action alert on October 27, 2008;<sup>38</sup> working with the political party known as the *Organisation du Peuple en Lutte* (“Struggling People’s Party”) (“OPL”) to issue a statement from the party leadership on February 6, 2012,<sup>39</sup> and a public complaint on OPL letterhead that was delivered to MINUSTAH, the UN peacekeeping mission

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37. Joseph Decl., Dkt. 20-1, Ex. C (July 21, 2015, Les Cayes Court of First Instance judgment).

38. Urgent Action, Amnesty Int’l, David Boniface (m), Aged 27; His Family (Oct. 27, 2008), <https://www.amnesty.org/en/wp-content/uploads/2021/06/amr360052008en.pdf> [Plaintiffs\_0000038-39].

39. Statement from Maurissant Jean Irvelt Chéry, Exec. Sec’y, Org. du Peuple en Lutte (Feb. 6, 2012) [Plaintiffs\_0000519-20].

in Haiti, on February 13, 2012;<sup>40</sup> filing a separate complaint with MINUSTAH on October 21, 2008;<sup>41</sup> filing complaints with the Jérémie office of *Justice et Paix*, the Haitian Catholic Church's social justice organization, on October 22, 2008, and with the national office of *Justice et Paix* on February 16, 2009;<sup>42</sup> visiting the U.S. embassy on December 22, 2008;<sup>43</sup> and successfully pursuing precautionary measures with the Inter-American Commission on Human Rights, ordered on July 28, 2015.<sup>44</sup>

116. In sum, in addition to their domestic legal efforts, they engaged the Haitian media, the United Nations, regional human rights mechanisms and international human rights organizations, grassroots groups, and a political party prior to filing the Complaint in this civil suit. I cannot think of any other initiative they could have taken that would have made their domestic efforts more successful.

117. Plaintiffs' exceptional efforts have succeeded in important ways. Many of Defendant's associates have been sent to prison. Defendant was formally charged for the murder of Ecclesiaste Boniface and the attack on the radio station. Plaintiffs have received precautionary measures from the IACHR, and were awarded civil damages.

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40. Declaration of David Boniface (Feb. 13, 2012) [Plaintiffs\_0000085-86].

41. Declaration of David Boniface, at 2 (Feb. 13, 2012) [Plaintiffs\_0000085-86], at Plaintiffs 0000086; Rapport de Plainte [Report of Complaint] (Feb. 13, 2012) [Plaintiffs\_0000087-89] (attaching declaration).

42. Declaration of David Boniface, at 2 (Feb. 13, 2012) [Plaintiffs\_0000085-86], at Plaintiffs 0000086.

43. Declaration of David Boniface, at 2 (Feb. 13, 2012) [Plaintiffs\_0000085-86], at Plaintiffs 0000086.

44. Ysemé Decl., Dkt. 105, Ex. B1 (Resolution 26/2015 of the IACHR). In my experience, proceedings before the Inter-American Commission are more valuable as opportunities to exert public pressure on the Haitian justice system and government than as a source of enforceable judgments. The IACHR struggles to have its decisions enforced throughout the Americas; in Haiti, there is almost never compliance without public pressure.

118. But Plaintiffs' efforts have also come up short in important ways. Defendant has spent only three months in prison, and that was during a very different government than the one that is in office now. Following his release, Defendant fled to the United States in 2009, where he largely remained until his appointment by presidential decree as interim mayor in August 2012. He appears to have returned frequently to Haiti since his appointment without having encountered any issues related to the Haitian proceedings, which remained pending against him as of March 2017 when Plaintiffs filed the present suit. Defendant has shown a sustained ability to influence and intimidate the justice system, to flee to the United States when necessary and to return to intimidate Plaintiffs when the timing was propitious. Plaintiff Nissage Martyr and Ecclesiaste Boniface are dead, and the surviving Plaintiffs have spent much of the last few years in hiding. Plaintiffs have not collected a single Haitian gourde on their civil judgments.

119. Moreover, developments in some of the cases brought against Defendant and his associates have been highly consistent with interference in the judicial process through either bribery, political influence, or intimidation. For example, the verdict in the criminal case related to the death of Ecclesiaste Boniface and the radio station attack was vacated at a hearing in May 2012, even though Plaintiffs never received notice of the hearing. Moreover, the ruling was based on the purported technicality that the trial court record was not included in the file. Although the prosecutor might have been able to cure this technical problem, he never attempted to cure.<sup>45</sup> In my opinion, the absence of the trial court record itself is consistent with a corrupt proceeding.

120. Throughout, Defendant also appears to have used his U.S. residency to avoid participating in the Haitian legal proceedings initiated against him. Following his release from

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45 Judgment (Ct. Cass. May 24, 2012) [Plaintiffs\_0000100-01].

detention in Haiti, Defendant left for the United States. Defendant was not present during the October 25, 2010 bench trial in Jérémie, which found six defendants guilty of involvement in the killing of Ecclesiaste Boniface and the attack on the radio station. The Jérémie court declared that *in absentia* proceedings would be initiated against Defendant.<sup>46</sup> Similarly, Defendant did not appear before the court in Les Cayes, which convicted five defendants for their roles in the killing of Ecclesiaste Boniface and the attack on the radio station. The Les Cayes court characterized Defendant as “a fugitive” and declared that *in absentia* proceedings would be initiated against him.<sup>47</sup>

121. Only after the U.S. Complaint was filed in March 2017, did Defendant engage with the Haitian legal proceedings. Even then, he did so under highly questionable circumstances. On April 30, 2018, Defendant appeared at a hearing before the Les Cayes court. No witnesses were summoned or testified. According to the trial record, Judge Destiné asked Defendant nine questions, none of which dealt with the killing of Ecclesiaste Boniface or the attack on the radio station.<sup>48</sup> The Judge asserted, without presenting any justification or reasoning, that Defendant “did not commit the crimes of which he is accused” and found him not guilty.<sup>49</sup>

122. It appears from the transcript that the Judge conducted the trial in a way that demonstrated extremely little interest in obtaining or reviewing evidence against Defendant. The

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46. Judgment, No. 736/08 (Civ. Ct. Jérémie Oct. 25, 2010) [Plaintiffs\_0000647-48].

47. Joseph Decl., Dkt. 20-1, Ex. C (July 21, 2015, Les Cayes Court of First Instance judgment).

48. Judgment, No. 15/00002 (Ct. First Instance Les Cayes Apr. 30, 2018) [Plaintiffs\_0000318-20], at Plaintiffs\_0000318-19.

49. Judgment, No. 15/00002 (Ct. First Instance Les Cayes Apr. 30, 2018) [Plaintiffs\_0000318-20], at Plaintiffs\_0000320.

decision to acquit was the result of either a corrupt decision or willful disregard for judicial standards. It is impossible to say which is true based on the record, but Haitian judges and prosecutors often disguise corruption as incompetence or lack of effort.

123. I believe that, under the circumstances, Plaintiffs have no practical likelihood of enforcing a civil judgment against Defendant in Haitian courts, while they have a high likelihood of being killed if they try to enforce a civil judgment. I do not believe that Plaintiffs could have done anything more within the Haitian justice system that would give them a realistic chance of obtaining an effective legal remedy.

124. I also believe that there is very little likelihood of the Haitian justice system completing a fair criminal prosecution of Defendant for the crimes alleged in the complaint in the foreseeable future. I do not believe that Plaintiffs could do anything more than they have already done to pursue a criminal prosecution and believe that any further steps are likely to increase the risk of their being killed without increasing the chance of a fair criminal prosecution.

#### **E. Plaintiffs Have a Valid Claim for Arson Against Defendant Under Haitian Law**

125. Article 356 of the Haitian Penal Code criminalizes arson, while Articles 1 and 3 of the Haitian Code of Criminal Procedure allows for a civil damages action for the crime.<sup>50</sup>

Article 356 of the Haitian Penal Code provides:

Anyone who intentionally sets fire to buildings, ships, boats, commercial stores, or construction sites, while they are inhabited or serving residential purposes, or who sets fire generally to locales that are inhabited or serve residential purposes, whether or not they belong to the author of the crime, shall be punished by forced labor for perpetuity.<sup>51</sup>

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50. Code d'Instruction Criminelle [Code of Criminal Procedure] arts. 1, 3 (see Exhibit D for the text of the provisions and the author's translations thereof).

51. Code Pénal [Penal Code] Art. 356 (as modified by the decree of July 4, 1988, abolishing the death penalty).



126. In this case, according to the allegations in the Complaint, the homes burnt down on October 29, 2009 were the private residences of the Plaintiffs' and others at the time, i.e., they were "buildings . . . serving residential purposes." Witnesses observed members of KOREGA set fire to Plaintiffs' homes using gasoline.<sup>52</sup> Witnesses also observed the militia members receiving orders from Defendant via a cellphone on speakerphone setting: Defendant specifically instructed the militia members to burn down Plaintiffs' homes—evincing both an intent to set fire to the buildings, and a knowledge that these were residences.<sup>53</sup> Thus, Defendant could be prosecuted for arson under Haitian law.

127. Indeed, following the arsons, Plaintiffs promptly engaged the Haitian justice system, filing a complaint with the police in Les Irois and with the prosecutor in Jérémie.<sup>54</sup> Following a bench trial, on August 12, 2013, 12 defendants, not including Defendant, were convicted of arson and the court declared that those defendants who were not present should be tried *in absentia*.<sup>55</sup> To date and to my knowledge, Defendant has not been tried for arson in Haiti.

128. Criminal arson is also a tort under Haitian law. The Haitian legal system, like the French system it was modeled on, allows persons claiming injury from a tort that was also a criminal act to piggy-back their civil claim onto a criminal proceeding through the *partie civile* or "civil party" procedure. Following a verdict in a criminal case, including an *in absentia* verdict, the civil plaintiffs present their claim for damages to the judge, who rules on both

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52. Compl. ¶¶ 56-57, Dkt. 1.

53. See, e.g., Mers Ysemé Dep. 66:11-69:4.

54. Declaration of David Boniface (Feb. 13, 2012) [Plaintiffs\_0000085-86], at Plaintiffs\_0000086.

55. Judgment (Civ. Ct. Jérémie Aug. 13, 2013) [Plaintiffs\_0000043-61], at Plaintiffs\_0000060.

liability and damages.<sup>56</sup> Thus, were Defendant convicted of arson, he would also be civilly liable for arson under Haitian law.

### III. CONCLUSION

129. For the above-mentioned reasons, I conclude that Plaintiffs have no meaningful access to remedies for their claims in the Haitian justice system.

Executed on: January 31, 2022

by: 

Brian Concannon

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56. Code d'Instruction Criminelle [Code of Criminal Procedure] arts. 294 and 371 (see Exhibit D for the text of the provisions and the author's translations thereof); *see also* Judgment (Ct. First Instance Gonaïves Nov. 16, 2000) (awarding civil damages following *in absentia* verdict).

## EXHIBIT A

### Curriculum Vitae

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#### **EDUCATION**

**Georgetown University Law Center**, Washington, DC, J.D. *cum laude*, 1989

**Middlebury College**, Middlebury, VT, B.A. *cum laude*, History and French, 1985

**Université de Paris X**, Nanterre, France: Exchange Student, 1983-1984

#### **PROFESSIONAL**

**Member of Massachusetts Bar**, 1989-present

**Institute for Justice and Democracy in Haiti (IJDH)**, Boston, MA

*Founder and Executive Director*, 2004-2019, November 2021-present

Lead human rights non-profit that:

- investigates human rights conditions in Haiti, prepares reports for the general public and the United Nations and Inter-American Human Rights systems;
- prepares briefings on human rights conditions in Haiti to members of the U.S. Congress, U.S. Executive Branch officials, and immigration officials in the U.S. and Canada;
- monitors elections; and
- represents political prisoners and victims of human rights violations in Haitian, U.S. and international courts.

**Blueprint Project**, Marshfield, MA

*Founder and Executive Director*, 2019-2021

Led non-profit that advocated for a human rights-based US foreign policy.

**Bureau des Avocats Internationaux**, Port-au-Prince, Haiti

*Co-Director and Lawyer*, 1996-2004

Led law office that helped the Haitian judiciary prosecute human rights cases. Responsibilities included:

- working with victims, judges, prosecutors, police and local and international NGOs to advance human rights cases. Involved at every stage of cases from pre-trial investigation through post-trial Supreme Court appeals;
- drafting pleadings and research under Haitian and international human rights law;
- investigating human rights violations;
- briefing members of the international community on human rights issues, including UN and U.S. State Department personnel and visiting U.S. Congressional delegations; and
- consulting for Ministers of Justice, Presidents and other national officials regarding judicial policies and practices.

**United Nations/Organization of American States Civilian Mission to Haiti,  
Human Rights Observer, Elections Observer, May 1995-February 1996**

- Investigated human rights violations, especially politically-motivated violence, prison conditions, violence against women and land conflicts;
- consulted with local judicial, police and elected officials on human rights issues; and
- provided training on Haiti's constitution and human rights to community groups.

**Concannon Law Offices, Marshfield, MA  
Lawyer, 1993-1995**

- Engaged in litigation and management for a small family law firm.

**Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., Boston, MA  
Associate in Litigation and Business Law Departments, 1989-1993**

- Reviewed, drafted and negotiated contracts for business clients ranging from medium-sized family businesses to large multinational corporations.
- Represented business clients in a wide range of litigation, including contractual and employment matters.

**FELLOWSHIPS/TEACHING**

**Whitman College, Walla Walla, WA, Visiting Scholar, January 2016**  
Taught interdisciplinary course on human rights advocacy.

**Harvard Law School, Cambridge, MA, Wasserstein Public Interest Fellows Program, Fellow, 2005-2006**

**Brandeis Institute For International Judges, Salzburg, Austria, June-July 2004, Guest Faculty Member**  
Created and led two seminars for international judges.

**Brandeis International Fellowships in Human Rights, Intervention and International Law,**  
International Center for Ethics, Justice and Public Life, Brandeis University, Waltham, MA, Fellow, 2001-03.  
Participated in series of institutes with activists, international judges, lawyers and diplomats.

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BOSTON HAITIAN REPORTER (regular column on justice in Haiti), 2004-2010, available at [www.ijdh.org](http://www.ijdh.org).

## **PUBLIC SPEAKING**

Interviewed regularly in print and television for North American, European and Haitian press, radio and television reports on human rights and justice in Haiti, including: the BBC, NPR, Washington Post, New York Times, Boston Globe, Miami Herald, CNN, and Al Jazeera, among others. Speak often to audiences at law schools, universities and other groups interested in human rights in Haiti.

## **AWARDS**

Salem Human Rights Award, 2014 (shared with Mario Joseph)

Canisius College, Doctor of Humane Letters, *Honoris Causa*, 2013

Rochester Coalition on Latin America “White Dove Award,” 2012

Center for Justice & Accountability Judith Lee Stronach Human Rights Award, March 2009 (shared by *Bureau des Avocats Internationaux* and Institute for Justice & Democracy in Haiti)

Haiti Solidarity Network of the Northeast “Friend of Haiti Award,” April 2005

Boston College High School St. Ignatius Award (for lifetime achievement), April 2004

## **LANGUAGES**

Fluent in French and Haitian Creole

**EXHIBIT B**

**Cases Where Testified as Expert in Last Four Years**

*Matter of S.P.* (N.Y.C. Immigr. Ct., testified Jan. 26, 2022)<sup>1</sup>

*Matter of R.G.* (Batavia, N.Y., Immigr. Ct., testified Dec. 3, 2020)

*Matter of D.S.* (San Juan, P.R., Immigr. Ct., testified Nov. 13, 2020)

*Matter of G.J.* (Batavia, N.Y., Immigr. Ct., testified Nov. 3, 2020)

*Matter of M.S.C.* (Buffalo, N.Y., Immigr. Ct., testified May 12, 2020)

*Matter of Y.B.Z.* (N.Y.C. Immigr. Ct., testified Mar. 13, 2020)

*Matter of S.P.* (Bos. Immigr. Ct., testified Jan. 31, 2020)

*Matter of J.P.* (S.F. Immigr. Ct., testified Jan. 15, 2020)

*Matter of R.S.* (S.F. Immigr. Ct., testified Nov. 29, 2017, Oct. 31, 2019)

*Saget v. Trump*, 375 F. Supp. 3d 280 (E.D.N.Y. 2019) (testified in Jan. 2019)

*Matter of C.F.H.F.P., M.A.C., W.D., M.G.P.* (N.Y.C. Immigr. Ct., testified Dec. 10, 2018)

*Matter of J.A.* (Cleveland, Ohio, Immigr. Ct., testified July 16, 2018)

*Matter of F.J.* (Batavia, N.Y., Immigr. Ct., testified Apr. 4, 2018)

*Matter of M.F.* (N.Y.C. Immigr. Ct., testified Mar. 23, 2018)

*Matter of W.P.* (Adelanto, Cal., Immigr. Ct., testified Jan. 10, 2018)

*Silais v. Sessions*, 855 F.3d 736 (7th Cir. 2017) (testified May 15, 2013)

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1. For privacy reasons, when listing immigration court proceedings in which I have testified, I have abbreviated noncitizens' names and omitted case numbers, which are the same as the noncitizens' unique alien registration numbers.



## EXHIBIT C

### Documents and Things Reviewed and/or Relied On

#### Books

William G. O'Neill & Elliot Schrage, Laws. Comm. for Hum. Rts., *Paper Laws, Steel Bayonets: Breakdown of the Rule of Law in Haiti* (1990)

Irwin P. Stotzky, *Silencing the Guns in Haiti* (1997)

#### Haitian Court Documents

Brief of Appellants (Ct. Cass. Aug. 23, 2013) [Plaintiffs\_0000040-41]

Concluding Order of Indictment, No. 736/08 (Ct. First Instance Jérémie Jan. 25, 2010) (French original) [Plaintiffs\_0000090-99]

Concluding Order of Indictment, No. 736/08 (Ct. First Instance Jérémie Jan. 25, 2010) (English translations) [VIL0001-12, VIL0042-51]

Excerpt from Judgment (App. Ct. Les Cayes Oct. 11, 2012) [VIL0033-35]

Excerpt from Judgment (Ct. First Instance Jérémie Feb. 14, 2011) [VIL0020-21, VIL0036]

Judgment (Civ. Ct. Jérémie Aug. 13, 2013) [Plaintiffs\_0000043-61]

Judgment (Ct. Cass. May 24, 2012) (French original) [Plaintiffs\_0000100-01]

Judgment (Ct. Cass. May 24, 2012) (English translations) [VIL0026-27, VIL0040-41]

Judgment (Ct. First Instance Gonaïves Nov. 16, 2000)

Judgment, No. 15/00002 (Ct. First Instance Les Cayes July 21, 2015) (Exhibit C to Declaration of Mario Joseph, Attorney, *Boniface v. Viliena*, 338 F. Supp. 3d 50 (D. Mass. 2018), Dkt. 20-1)

Judgment, No. 15/00002 (Ct. First Instance Les Cayes Apr. 30, 2018) [Plaintiffs\_0000318-20]

Judgment, No. 736/08 (Civ. Ct. Jérémie Oct. 25, 2010) [Plaintiffs\_0000647-48]

Minutes of Incident Report (J.P. Ct. Les Irois Dec. 5, 2011) (French original) [Plaintiffs\_0000316]

Minutes of Incident Report (J.P. Ct. Les Irois Dec. 5, 2011) (English translations) [VIL0016-17, VIL0032]

Minutes of the Oath of Office (J.P. Ct. Les Irois Feb. 11, 2011) [VIL0013-15, VIL0031]

Notice and Order (J.P. Ct. Les Cayes July 17, 2017) [VIL0018-19, VIL0028]

Notice of Appeal (Civ. Ct. Jérémie Aug. 14, 2013) [Plaintiffs\_0000042]

**U.S. Pleadings and Other Legal Documents**

*Boniface v. Viliena*, 338 F. Supp. 3d 50 (D. Mass. 2018)

Complaint for Damages and Injunctive Relief, *Boniface v. Viliena*, No. 17-cv-10477-ADB (D. Mass. Mar. 22, 2017), Dkt. 1

Declaration of Mario Joseph, Attorney, *Boniface v. Viliena*, 338 F. Supp. 3d 50 (D. Mass. 2018), Dkt. 20-1

Declaration of Juders Ysemé, *Boniface v. Viliena*, No. 17-cv-10477-ADB (D. Mass. Aug. 8, 2019), Dkt. 78-1

Declaration of Juders Ysemé, *Boniface v. Viliena*, No. 17-cv-10477-ADB (D. Mass. Mar. 13, 2020), Dkt. 105

Memorandum in Support of Plaintiffs' Emergency Motion for Protective Order to Bar Harassment and Intimidation of Parties and Witnesses, *Boniface v. Viliena*, No. 17-cv-10477-ADB (D. Mass. Aug. 8, 2019), Dkt. 78

Opening Statement, *Boniface v. Viliena*, No. 17-cv-10477-ADB (D. Mass. Sept. 7, 2017) [VIL0029-30]

Plaintiffs' Opposition to Defendant's Motion to Dismiss, *Boniface v. Viliena*, 338 F. Supp. 3d 50 (D. Mass. 2018), Dkt. 49

Protective Order, *Boniface v. Viliena*, No. 17-cv-10477-ADB (D. Mass. Aug. 8, 2019), Dkt. 80

Transcript of Deposition of Jean Denais Laguerre, *Boniface v. Viliena*, No. 17-cv-10477-ADB (D. Mass. Oct. 28, 2020)

Transcript of Deposition of Jean Morose Viliena, *Boniface v. Viliena*, No. 17-cv-10477-ADB (D. Mass. Nov. 1, 2021)

**Articles and Other Documents**

Allard K. Lowenstein Int'l Hum. Rts. Clinic at Yale L. Sch., Bureau Des Avocats Internationaux, Inst. for Just. & Democracy in Haiti, Demande de Mesures Préventives Contre La République D'Haïti Au Nom Des Défenseurs Haïtiens Des Droits de L'Homme David Boniface, Nissage Martyr, et Juders Ysemé, Leurs Familles Immédiates, Ainsi Que Des Autres Dans Des Situations Similaires (July 17, 2015) [Plaintiffs\_0000552-70]

Bureau of Democracy, Hum. Rts. & Labor, U.S. Dep't of State, *Country Reports on Human Rights Practices for 2018: Haiti* (2018), <https://www.state.gov/wp-content/uploads/2019/03/HAITI-2018.pdf> [Plaintiffs\_0000573-604]

Code d'Instruction Criminelle

Code Pénal

Commission Interaméricaine de droit de l'homme, Résolution 26/2015, Affaire Juders Ysemé et autres au sujet d'Haïti (July 28, 2015) [Plaintiffs\_0000540-45]

Brian Concannon, Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, A View from Haiti*, 32 Colum. Hum. Rts. L. Rev. 201 (2000)

Constitution de la République d'Haïti

*Le CSPJ écrit au Président de la République*, Le Nouvelliste (Sept. 11, 2018), <https://lenouvelliste.com/article/192483/le-cspj-ecrit-au-president-de-la-republique>

Declaration of David Boniface (Feb. 13, 2012) [Plaintiffs\_0000085-89]

*Dominique v. Haiti*, Petition 945-05, Inter-Am. Comm'n H.R., Report No. 9/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007) [Plaintiffs\_0000214]

E-mail from American Airlines to Jean Morose Viliena (Sept. 25, 2013, 3:59 PM) [Viliena Second Supp Production 000100-01]

E-mail from American Airlines to Jean Morose Viliena (May 30, 2014, 1:26 PM) [Viliena Second Supp Production 000011-13]

E-mail from CheapTickets Traveler Care to Jean Morose Viliena (Dec. 13, 2014, 2:47 AM) [Viliena Second Supp Production 000014-17]

E-mail from Delta Air Lines to Jean Morose Viliena (May 28, 2013, 6:04 AM) [Viliena Second Supp Production 000054-55]

E-mail from Delta Air Lines to Jean Morose Viliena (Aug. 13, 2014, 10:42 PM) [Viliena Second Supp Production 000056-60]

E-mail from Ralph Theano to Jean Morose Viliena (Aug. 19, 2012, 12:40 AM) [Viliena Second Supp Production 000078-79]

E-mail from Jean Morose Viliena to Peter Haley (Jan. 19, 2021, 5:50 PM) [Viliena Second Supp Production 000041-47]

E-mail from Jean Morose Viliena to twidy509@yahoo.com (Jan. 1, 2014, 11:04 AM) [Viliena Second Supp Production 000035-38]

Harvard L. Sch. Int'l Hum. Rts. Clinic & Observatoire Haïtien des crimes contre l'humanité, *Killing with Impunity: State-Sanctioned Massacres in Haiti* (2021), [http://hrp.law.harvard.edu/wp-content/uploads/2021/04/Killing\\_With\\_Impunity-1.pdf](http://hrp.law.harvard.edu/wp-content/uploads/2021/04/Killing_With_Impunity-1.pdf)

Inst. for Just. & Democracy in Haiti, Demande D'extension des Mesures Préventives Contre La République D'Haïti Au Nom Des Défenseurs Haïtiens des Droits de l'homme David Boniface, Nissage Martyr, et Juders Ysemé et tous les autres dans des situations similaires (July 16, 2017) [Plaintiffs\_0000546-51]

Letter from Elizabeth Abi-Mershed, Deputy Exec. Sec'y, Inter-Am. Comm'n H.R., to Jim Silk, Director, Allard K. Lowenstein Int'l Hum. Rts. Clinic at Yale Law School, Mario Joseph, Bureau des Avocats Internationaux, & Nicole Phillips, Inst. for Just. & Democracy in Haiti (July 28, 2015) [Plaintiffs\_0000358]

Letter from Paulo Abrão, Executive Secretary, Inter-Am. Comm'n H.R., to Jim Silk, Dir., Allard K. Lowenstein Int'l Hum. Rts. Clinic at Yale L. Sch., Mario Joseph, Bureau des Avocats Internationaux, Nicole Phillips, Hum. Rts. Legal Advisor, Daniel McLaughlin, Sr. Staff Att'y, Ctr. for Just. & Accountability, & Bonnie Lau, Morrison & Foerster (Sept. 25, 2019) [Plaintiffs\_0000571-72]

Letter from Mario Joseph, Bureaux des Avocats Internationaux, to Viosnel Bissainthe, Pub. Prosecutor for the Gov., Off. of the Pub. Prosecutor for the Ct. of First Instance of Les Cayes (July 30, 2014) (Exhibit B to Declaration of Mario Joseph, Attorney, *Boniface v. Viliena*, 338 F. Supp. 3d 50 (D. Mass. 2018), Dkt. 20-1)

Letter from Mario Joseph, Bureaux des Avocats Internationaux, to Pub. Prosecutor for the Gov., Off. of the Pub. Prosecutor for the Ct. of First Instance of Jérémie (Mar. 31, 2017) (Exhibit F to Declaration of Mario Joseph, Attorney, *Boniface v. Viliena*, 338 F. Supp. 3d 50 (D. Mass. 2018), Dkt. 20-1)

Letter from Nat'l Leadership Conf. of Haitian Mayors to Paul Antoine Bien-Aimé, Minister of the Interior & Territorial Collectives (Oct. 27, 2008) [VIL0022-25, VIL0037-39]

Letter from Nicole Phillips, Hum. Rts. Legal Advisor, Daniel McLaughlin, Sr. Staff Att'y, Ctr. for Just. & Accountability, & Bonnie Lau, Morrison & Foerster, to Inter-Am. Comm'n H.R. (Aug. 30, 2019) [Plaintiffs\_0000714-27]

Letter from Bettina B. Plevan, President, Ass'n of the Bar of the City of N.Y., to Gérard Latortue, Minister of the Interior & Territorial Collectives, & Henri Dorléans, Minister of Just. & Pub. Sec. (Aug. 12, 2005)

William G. O'Neill, *Un besoin prioritaire: reformer la justice en Haïti*, Nat'l Coal. for Haitian Rts. (Mar. 1995), [https://www.nchr.org/nchr/hrp/jud\\_reform\\_fr.htm](https://www.nchr.org/nchr/hrp/jud_reform_fr.htm)

Pages from Passport No. 1803587 of Jean Morose Viliena [Viliena Fourth Supp Production 000002-05]

Pages from Passport No. 3091474 of Jean Morose Viliena [Viliena Fourth Supp Production 000006-12]

Press Release, U.S. Dep't of the Treasury, Treasury Sanctions Serious Human Rights Abusers on International Human Rights Day (Dec. 10, 2020), <https://home.treasury.gov/news/press-releases/sm1208>

Public Statement, Amnesty Int'l, Haiti: Obliterating Justice, Overturning of Sentences for Raboteau Massacre by Supreme Court Is a Huge Step Backwards (May 26, 2005), <https://www.amnesty.org/ar/wp-content/uploads/2021/08/amr360062005en.pdf>

Rapport de Plainte (Feb. 13, 2012) [Plaintiffs\_0000087-89]

Réseau Nat'l de Déf. des Droits Humains, *Etude sur les conditions générales de travail des composantes de la chaîne pénale haïtienne* (2019), <https://web.rnddh.org/wp-content/uploads/2019/03/2-Rap-études-sur-les-conditions-de-travail-des-acteurs-de-la-chaîne-pénale-21Mar19.pdf>

Réseau Nat'l de Def. des Droits Humains, *Fonctionnement de l'appareil judiciaire haïtien au cours de l'année 2018-2019* (2019), <https://web.rnddh.org/wp-content/uploads/2019/10/4-Rap-Justice-15Oct2019.pdf>

Statement from Maurissaint Jean Irvelt Chéry, Exec. Sec'y, Org. du Peuple en Lutte (Feb. 6, 2012) [Plaintiffs\_0000519-20]

Urgent Action, Amnesty Int'l, David Boniface (m), Aged 27; His Family (Oct. 27, 2008), <https://www.amnesty.org/en/wp-content/uploads/2021/06/amr360052008en.pdf> [Plaintiffs\_0000038-39]

Urgent Action, Amnesty Int'l, Human Rights Defenders' Lives in Danger (Apr. 12, 2017) (Exhibit A to Declaration of Juders Ysemé, *Boniface v. Viliena*, No. 17-cv-10477-ADB (D. Mass. Aug. 8, 2019), Dkt. 78-1)

William G. O'Neill & Elliot Schrage, Laws. Comm. for Hum. Rts., *Paper Laws, Steel Bayonets: Breakdown of the Rule of Law in Haiti* (1990)

**PAPER  
LAW**

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**BREAKDOWN  
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BREAKDOWN OF THE RULE OF LAW IN HAITI**

**November 1990**

**Lawyers Committee for Human Rights  
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## **PAPER LAWS, STEEL BAYONETS: BREAKDOWN OF THE RULE OF LAW IN HAITI**

### **INTRODUCTION**

There is no system of justice in Haiti. Even to speak of a "Haitian justice system" dignifies the brutal use of force by officers and soldiers, the chaos of Haitian courtrooms and prisons, and the corruption of judges and prosecutors.

Members of the Armed Forces of Haiti (the *Forces Armées d'Haiti*, or FADH) systematically ignore basic human rights in their treatment of civilians. Internationally recognized human rights, rights frequently codified in Haitian law, are violated with persistent regularity. Reports from every region of Haiti reveal a consistent pattern of abuses:

- Haitians are routinely taken from their homes or the streets and thrown into detention by members of the FADH, with no legal basis whatsoever and with no access to judicial protection. Members of Haiti's opposition groups have been particular targets of harassment and arrest. The government has arrested and detained political activists, union officials, journalists and church leaders.
- Judges have been detained and beaten for ruling against members of the FADH;
- Attorneys have been harassed, threatened, and murdered for challenging the FADH or its allies in the civilian courts;
- No member of the FADH has ever been charged or prosecuted before a civilian court for ordering or executing any human rights abuse in violation of the 1987 Constitution, despite widely available evidence implicating the FADH in the assassination of political opponents and the massacre of civilians.

Irwin P. Stotzky, *Silencing the Guns in Haiti* (1997)

# SILENCING

THE PROMISE OF

# THE GUNS

DELIBERATIVE DEMOCRACY

# IN HAITI



IRWIN P. STOTZKY

# Silencing the Guns in Haiti

**THE PROMISE OF  
DELIBERATIVE  
DEMOCRACY**

Irwin P. Stotzky

The University of Chicago Press  
Chicago and London

IRWIN P. STOTZKY is professor of law at the University of Miami School of Law and has served as attorney and adviser to Jean-Bertrand Aristide and as adviser to the René Preval administration. For his representation of Haitian refugees before the U.S. Supreme Court, Stotzky has received Human Rights Awards from the American Immigration Lawyers Association and the Haitian Refugee Center. For his work in investigating human rights abuses and his scholarship, he has received the *Inter-American Law Review's* Lawyer of the Americas award.

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transformation. So if Haiti begins on this path, it is possible that positive results may follow.

Institutional structures must be developed and secured. Economic and political stability must be assured. Corporatist social and political structures must be transformed so that the powerless get their fair share of the basic necessities of life. The rule of law must become paramount in the formal institutions and practices of government, and in the affairs of daily life.

To satisfy the epistemic value of democracy, these issues must become grist for the mill of public debate, and their complexity understood. Although these issues may be theoretically severable, they are also inextricably intertwined. The rule of law, for example, must be consolidated not only to protect human rights, but also to help secure a satisfactory level of economic, political, and social development. Moreover, an independent judiciary is crucial to the process of consolidating the rule of law. This is a good starting point from which to view the specific case of Haiti.

The role of an independent judiciary in the transition process is, of course, extremely complex. One major complication is the very fact that the institutional structures necessary for a viable democracy remain in varying stages of development in Haiti. The transition to democracy is usually represented in one of two distinct stages. In one stage, a country is attempting to adjust norms or institutions toward the strictures of the democratic rule of law. In this preliminary stage of development, it is necessary for the institutional structures associated with a democratic government, such as an independent judiciary or competition between different political parties, to be developed. In the other stage of development, the democratic institutional structures exist in a developed form, but their stability is not completely secured.

Haiti is clearly in the first stage of development. The nation not only needs to develop institutions, it must also train a large number of people to run them. But what is even more ominous for the success of any possible transition to democracy in Haiti is the fact that its institutional structure, particularly its judicial structure, is less developed than that of virtually any nation that has attempted this precarious transformation. The problem is further exacerbated by Haitian history. Social tensions and conflicts sometimes coercively interfere with the creation and development of viable institutional structures, and it is no exaggeration to claim that Haiti has never had a true system of justice. For decades, the FAD'H systematically

Brief of Appellants (Ct. Cass. Aug. 23, 2013) [Plaintiffs\_0000040-41]



Jérémie, le 23 août 2013

**Aux Honorables Président,  
Vice-Président et Juges de la Cour de Cassation  
De la République.-  
Palais de Justice.-  
Honorables Magistrats,**

Les citoyens Logis Frederic, identifié au CIN : 08-08-99-1954-04-00001 et Nissage Marthyr, identifié au CIN : 08-08-99-1960-05-00002, puis, Antoine Kesnel, Boniface David, identifiés respectivement aux CIN : 08-08-99-1960-05-00002 et 08-08-99-1981-01-00007, se portant ~~port~~ pour les autres victimes, et procédant par Me Mercier Josma, Me Ariel Chéry, Me Yvon Janvier du Barreau de Jérémie, identifiés, patentés et imposés au revenu aux No. 001-150-154-1, A-204038, A-204018 et 001-166-685-8, I-2773 468, I-2773 469, et 001-152-920-3, I-2773 056, I-2773 021, avec élection de domicile tant au cabinet du premier avocat qu'au greffe de la Cour de Cassation, ont l'honneur de vous exposer :

Un incendie criminel, allumé par les individus suivants : Marc-Arthur Conte, Smith Bajon, Mercurieu Jean-Pierre, Ebert Saintius, France Ismé, Vilerme Duclona, Lifaité Livert, Michelet Noël, Lissage Villiena, Jean-Louis Bell, Charles Louinès, Benisoit Bell, a consumé une quarantaine de maisons dans la ville des Irois. Le drame eut lieu dans la nuit du 29 au 30 octobre 2009. Douze des criminels, les autres étant en fuite, ont été arrêtés et traduits au Tribunal criminel de Jérémie. Les accusés ont tous nié les faits portés à leur charge. Cependant les témoins, après l'accomplissement des formalités d'usage, ont porté des charges formelles à l'encontre des douze accusés, tout en soulignant notamment la préméditation.

En effet, les accusés avaient publiquement déclaré la veille du crime, qu'en cas de décès de l'un de leurs amis, Odfort Bajon, terrassé depuis quelque temps par une maladie dont ils avaient imputé la provenance mystique aux futures victimes, ils mettraient la ville des Irois à feu et à sang.

De fait, dans la nuit du 29 octobre 2009, Odfort Bajon passa de vie à trépas. Ses partisans se sont rassemblés et, empoignant des gallons remplis de gazoline, ils ont passé à l'action comme ils se l'étaient promis. Une quarantaine de maisons furent incendiées. Quantité de familles furent jetées dans la rue.

Le Magistrat de la cause, par excès de pouvoir, a atténué en faveur des accusés la sanction prévue par le 1<sup>er</sup> alinéa de l'article 356 du Code Pénal.

Attendu que dans l'un de ses considérants, le juge de la cause a déclaré : « Considérant que les accusés pouvaient ne pas se posséder en pleurant Odfort Bajon qui leur était cher » (sic)

Attendu que le législateur laisse peu de place à la subjectivité dont est empreint le susdit Considérant,

Attendu que le droit exige une rigueur objective,

Attendu qu'en face de la préméditation dont les accusés avaient fait montre, le juge aurait dû appliquer la loi dans toute sa rigueur ;

Certes, le pouvoir discrétionnaire permet au juge de prendre des dispositions en vue d'atténuer la peine criminelle en application de l'article 382, 5<sup>ème</sup> alinéa, du Code Pénal ;

Toutefois, attendu que dans le cas qui a été jugé, on arrive difficilement à trouver les motifs qui peuvent justifier cette atténuation, d'autant que la préméditation a été nettement établie,

Attendu que, par ailleurs, aucun des accusés n'a reconnu avoir participé à la perpétration du crime, voire en exprimer du remords, ce qui aurait justifié la clémence du Tribunal,

Par ces causes et motifs, il plaira à la Cour, pour le respect de la loi, d'infirmer la décision rendue le 13 août 2013 par le Tribunal criminel de Jérémie sans assistance de Jury, en ce sens qu'elle constitue un outrage au droit et un excès de pouvoir, désigner le Tribunal de renvoi. Ce sera justice.

Agréez Honorables Président, Vice-président et juges de la Cour nos respectueuses salutations,

  
Mercier Josma  
Avocat

  
Me Yvon Janvier  
Avocat

  
Me Ariel Chéry  
Avocat

Concluding Order of Indictment, No. 736/08 (Ct. First Instance Jérémie Jan. 25, 2010) (French original) [Plaintiffs\_0000090-99]

Liberté

Egalité

Fraternité

République d'Haïti

Au nom de la République

1

Ordonnance de clôture dossier No 756/08

Nous, Me. Jean Gary Jundy, Juge d'Instruction au Tribunal de Première Instance de Jérémie, assisté de M. Lanchard Dolcé, greffier dans l'affaire des nommés Jean Morose Viliéna, <sup>decedé</sup> Hautefort Bajon, <sup>decedé</sup> Maxène Vilsaint, <sup>Américain</sup> ainsi connu, Viliéna Duclona, Martyr Kenson, Boileau Pierrot, <sup>decedé</sup> Lissage Viliéna, Monès Dorcéna, Guesson Pierre, Keleman ainsi connu, Franc Isemé, Jean Pierre Gandy, Agnel Jean, <sup>decedé</sup> Jean Louis Bell, Lifaité Livert, <sup>decedé</sup> Esta Bell, <sup>Américain</sup> Méritus Beaublanc, Cedernier Fleurime, Michelet Noel prévenus d'assassinat et de complicité d'assassinat sur la personne de Boniface Ecclésiaste, de destruction de bien public au préjudice de la communauté des Irois, de coups et blessures par balles sur la personne de Jude Isemé et de Missage Martyr, exécutant l'ordonnance suivante :

Vu l'Instruction entamée et poursuivie au dossier de Jean Morose Viliéna, 36 ans économiste de profession, né aux Irois y demeurant et domicilié, Hautefort Bajon, Maxène Vilsaint, Ti Américain ainsi connu, Viliéna Duclona, Martyr Kenson, Boileau Pierrot, Lissage Viliéna, Monès Dorcéna, Guesson Pierre, Keleman ainsi connu, Franc Isemé, Jean Pierre Gandy, Agnel Jean, Jean Louis Bell, Lifaité Livert, Esta Bell, Beaublanc Méritus, Cedernier Fleurime, Michelet Noel en cavale, prévenus d'assassinat sur la personne de Boniface Ecclésiaste, de destruction de bien public au préjudice de la communauté des Irois, de coups et blessures par balles sur la personne de Jude Isemé et de Missage Martyr;

- Vu le requisitoire d'informer du Parquet en date du 09\_03\_08;
- Seize (16) mandats d'arrêt;
- 2 certificats médicaux de Isemé Jude en date du 21 avril 2008 et 29 avril de la même année;
- Procès verbal de constat au tribunal de Paix des Irois en date du 09\_04\_08;
- Certificat médical de Missage Martyr en date du 05\_05\_08;
- Ordonnance de soit communiqué en date du 23\_05\_08 aux fins de requisitoire d'informer;
- Requisitoire aux fins de main levée du mandat de dépôt en date du 22 juin 2008
- certificat médical du nommé Vilsaint Maxène en date du 08\_08\_08;
- Ordonnance du CI aux fins de main levée du mandat de dépôt en date du 19\_06\_08
- Plaque photographique du nommé Lissage Martyr;
- Requete de Viliéna Morose à Liberto Edmond, Vilès Edmond, Sanite Comte en date du 07 octobre 2008

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 Jean Gary Jundy  
 Juge d'Instruction

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- \_ Ordonnance aux fins de main levée et mandat de dépôt en date du 09\_07\_09;
- \_ Correspondance du Parquet en date du 10 juin 2008 adressée au responsable du Ministère de la planification / Fort-au-Prince.
- \_ Ordonnance de soit communiqué aux fins de main levée du mandat de dépôt en date du 04\_12\_08.
- \_ Requete de Me. Richardson Philippe adressée au Cabinet d'Instruction le 30 septembre 2008.
- \_ Copies des requetes adressées a M. Sanite Compte Lobello Edmond en date du 08 octobre 2008.
- \_ Requete adressée au Cabinet d'Instruction en date du 10 octobre 2008 par les Cabinet Me. Jean Richardson Philippe et Mihumilius Gangeon.
- \_ Correspondance du Ministère de l'Intérieur et des collectivités territoriales, à Monsieur Viliéna Meroso, Maire des Iles, en date du 25 juillet 2007.
- \_ Copie du mandat d'amener décerné contre Message Martyn en date du 27 juillet 2007 par le Juge de Paix des Iles Saint Jean Ball;

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*Jean Guy*



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- \_ Correspondance adressée au Cabinet d'Instruction par un groupe de citoyens des Irois en date du 10 octobre 2008;
- \_ Ordonnance de soit communiqué du Cabinet d'Instruction en date du 16 octobre 2009;
- \_ Conclusions du Ministère public relatives à l'émission des mandats d'arrêt en date du 17 mars 2009;
- \_ Conclusions prises en faveur du nommé Antoine Jimmy en date du 11 mars 2009;
- \_ Requete adressée au Cabinet d'Instruction par Jean Morose Viliéna en date du 07 octobre 2008 via son avocat Me. Jacques Robert Juste du barreau de Jérémie;
- \_ Requete adressée au Cabinet d'Instruction par Vilsaint Maxène en date du 02 février 2009;
- \_ Plainte déposée au Cabinet d'Instruction par Judans Isomé contre le Maire principal des Irois M. Viliéna Morose;
- \_ Requete adressée au Cabinet d'Instruction par Me. Richardson Philippe en faveur du Maire principal de la Commune des Irois Jean Viliéna Morose en date du 01 oct 2008;
- \_ Ordonnance aux fins de décerner des mandats d'arrests en date du 05 mars 2009;
- \_ Requete du 29 janvier 2009 adressée au Cabinet d'Instruction par les nommés Jermy Antoine et Monès Dorcéna;
- \_ Interrogatoire du nommé Maxène Vilsaint en date du 29 janvier 2009;
- \_ Ordonnance en main levée du mandat de dépôt en faveur du nommé Jea Morose Viliéna;
- \_ Conclusions du Ministère public en date du 04\_12\_08 relatives à la main levée de mandat de dépôt en faveur de Jean Morose Viliéna;
- \_ Ordonnance de soit communiqué du Cabinet d'Instruction aux fins de main levée du mandat d'écrou en date du 04 décembre 2008;
- \_ Certificat médical délivré par le Docteur Joseph Nicolas Petit relatif à l'état de santé de Nissage Martyr en date du 18 août 08;
- \_ Plainte déposée au Parquet de Jérémie par Nissage Martyr en date du 15 avril 2008;
- \_ Dépôt de plainte fait par l'Organisation TADI le 16 avril 2008 au Parquet de ce ressort;
- \_ Inventaire du dossier datant du 04 décembre 2008;
- \_ Interrogatoire du nommé Monès Dorcéna en date du 19 octobre 2008;
- \_ Interrogatoire de Wilfranc Lazieux en date du 07 octobre 2008;
- \_ Interrogatoire de Madame Jeamil St Fil en date du 17 janvier 2009;
- \_ Interrogatoire du nommé Vital Gérard au Cabinet d'Instruction en date du 17 janvier 2009;
- \_ Interrogatoire du nommé Nissage Martyr en date du 25 septembre 2008;
- \_ Interrogatoire du nommé Judans Isomé en date du 07 octobre 2008;
- \_ Confrontation en date du 30\_09\_08 entre Jean Morose Viliéna et Nissage Martyr au Cabinet d'Instruction;
- \_ Interrogatoire de Ville Hilaire en date du 09 octobre 2008;
- \_ Confrontation entre Morose Viliéna et David Bonifage en date du 03 décembre 2008

Jean (Vey) [Signature]

- Interrogatoire du nommé Boniface David en date du 16 octobre 2008, au CI;
- Le requisitoire définitif du Parquet en date du 21 décembre 2009;
- La présente ordonnance;

Attendu qu'en date du 15 avril 2008, Nissage Matyr a porté plainte contre Viliéna ainsi connu et ses hommes de mains, qui, dit-il, ont détruit sa maison de radio logeant la station de radio dénommée "Radio" Nouvelle et ont également attenté à sa vie en tirant sur lui;

Attendu que les responsables de l'Organisation dénommée TADI ont eux de leur côté, par lettre de plainte en date du 16 avril 2008, entendre voir le Parquet mettre l'action publique en mouvement contre Jean Morose Viliéna et ses acolytes pour : Destruction de la station de la radio communautaire "Radio Nouvelle", assassinat commis sur la personne de Ecclésiaste Boniface :

Attendu que le 16 avril 2008, le Commissaire du Gouvernement de ce ressort par son requisitoire d'informer a requis le Juge instructeur d'ouvrir une information contre le nommé Viliéna Morose et ses acolytes pour ces faits à eux reprochés;

Attendu que suite à la transmission d'un procès verbal de constat du Juge de Paix des Irois, des certificats médicaux des nommés : Nissage Martyr et Juders Isemé comme victime des actes perpétrés en date du 08 avril 2008, le Juge instructeur, suivant son soit communiqué, a enjoint le Commissaire, du gouvernement en raison du principe de la séparation du droit de poursuivre et du droit d'instruire, de lui soumettre son requisitoire d'informer en raison de ces faits qu'il estime comme étant des faits nouveaux;

Attendu qu'en date du 09 juin 2008, le requisitoire d'informer du Commissaire du Gouvernement sur ces faits nouveaux a été acheminé au Magistrat instructeur;

Attendu que du cahier de l'information, l'interrogatoire de l'un des principaux auteurs de ces actes soumis à la Justice Jean Morose Viliéna a effectivement reconnu qu'il y eût cet incident ayant conduit à la destruction de la radio "Radio Nouvelle" ainsi que des blessés;

Attendu qu'il a poursuivi en guise d'explication à ces faits qui se sont déroulés " Que le 08 avril 2008, entre 11 heures et 12 heures, Josy Isemé un élève de la troisième secondaire du lycée des Irois a pointé son arme sur lui et se réfugia par la suite au local abritant la radio.

*Josy Isemé*

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Ainsi, une fraction de la population mécontente s'y dirigea et de là, un conflit allait éclater";

Attendu qu'il n'a pas nié que Radio Nouvelle, ce jour-là, ait été mise à sac et qu'il y a eu également des blessés;

Attendu que du nombre de ces blessés Lissage Martyr s'est vu amputé de sa jambe droite pour plaies multiples par arme à feu et Juders Isémé, enlevé son oeil droit, suite à de multiples plaies ponctiformes provoquées par arme à feu appert des certificats médicaux à leur délivrés en la circonstance;

Attendu que Jean Morose Viliéna a été vu à la tête de ses hommes armés de batons, de machettes, de pierres, d'armes à feu qui se proposaient d'imposer leur loi;

Attendu qu'il a été également dénoncé par Boniface David comme l'auteur du meurtre de son frère Boniface Ecclésiaste qui a été, dit-il, tué à sa place dans la soirée du 27 juillet 2007;

Attendu qu'il y a lieu de traduire Jean Morose Viliéna et ses hommes clairement identifiés devant le Tribunal compétent pour répondre de tous ces faits à leur reprochés;

Attendu que bon nombre d'actes pour la constitution de plainte de la Justice ont pris la clé des champs, appert les mandats d'arrêt décernés contre eux par le Juge instructeur;

Attendu qu'en droit pénal, la fuite constitue une présomption de culpabilité;

Attendu qu'il y a lieu également de parler de connexité dans le cas de ces infractions reprochées à Jean Morose Viliéna et sa bande;

Attendu que le Code d'Instruction Criminelle relativement aux infractions connexes fait obligation au Juge instructeur de statuer sur le tout par une seule décision en renvoyant la cause par devant le Tribunal ordinaire qui siègera sans assistance de Jury;

REQUISITIONS FINALES

.....  
AUX FINS DE RENVOI DEVANT LA TRIBUNAL CRIMINEL **SANS** ASSISTANCE DE JURY  
.....

Attendu qu'il y a lieu à suivre contre : Jean Morose Viliéna, Hautefort Bajon, MaXène Vilsaint, Bi Américain ainsi connu, Viliéna Duclona, Martyr Kenson Boileau Pierrot, Lissage Viliéna, Monès Dorcéna, Guerson Pierre, Kéléman ainsi connu, France Isémé, Jean Pierre Sandy, Agnel Jean, Jean Louis Bell, Lifaité Livert, Esta Bell, Méritus Beaublanc, Cedernier Fleurimé, Michelot Noel tous propriétaires, demeurant et domiciliés aux Irois, pour avoir commis le crime qualifié d'assassinat et de complicité d'assassinat sur la personne de Boniface ECCLÉSISTE, de destruction de bien public au préjudice de la communauté des Irois

*Handwritten signature and initials*



des coups et blessures par balles occasionnant l'amputation de la jambe droite de Nissage Martyr, la perte de l'oeil droit du Juge Isemé;

Faits prévus et punis par les articles 241 et suivants, 356 et suivants, 251, 255 et suivants du code pénal haïtien.

Vu les articles 112, 113, 119 et 120 combinés du code d'Instruction criminelle,

Requiert qu'il plaise à Monsieur le Juge instructeur dire qu'il y a lieu à suivre contre : Jean Morose Viliéna, Haute fort Bajon, Maxène Vilsaint, Ti... Américain ainsi connu, Viliéna Duclona, Martyr Kenson, Boileau Pierrot, Nissage Viliéna, Monès Dorcena, Guenson Pierre, Kélémán ainsi connu, France Isemé, Jean Pierre Gandy, AgnelJean, Jean Louis Bell, Lifaité Livert, Esta Bell, Méritus Beau blanc, Cedernier Fleuriné, Michelet Noel, tous propriétaires, demeurant et domiciliés aux Irois, pour avoir commis le crime qualifié d'assassinat et de complicité d'assassinat sur la personne de Boniface Ecclésiaste, de destruction de bien public au préjudice de la communauté des Irois, de coups et blessures par balles occasionnant l'amputation de la Jambe droite de Nissage Martyr, la perte de l'oeil droit de Juge Isemé, les renvoyer devant le Tribunal criminel sans assistance de Jury pour y être jugés conformément à la loi.

Et ce sera Justice.

Parquet du Tribunal de Première Instance de Jérémie, ce 21 décembre 2009, An 206ème de l'Indépendance.

.....  
Marjolaine Auguste, Mag  
Commissaire du gouvernement.

Attendu que par requête d'information du Parquet de ce ressort en date du 09 juin 2009, le Cabinet d'Instruction criminelle de Jérémie entame une poursuite contre les inculpés précités sous les inculpations sus énumérées;

Attendu que Nissage Martyr, l'un des victimes s'explique le mardi 09 avril aux environs d'une (1) heure dans l'après midi, qu'il s'était rendu à son jardin que de retour, sa cousine Julia Sourmain l'annonçait qu'un groupe d'individus s'apprêtaient à s'attaquer à sa maison en vue d'enlever une station de radio qui y logeait que ce groupe mené par le maire de la Commune des Irois, Jean Morose Viliéna qui portait un fusil de calibre douze (12), dégainant sur lui et est atteint des balles à la jambe, causant ainsi l'amputation d'un de ses membres inférieurs apporté le certificat médical émanant du Docteur Joseph Nicolas Petit, affecté à l'Hôpital Lumière, le 17 avril 2009;

Jean Guy [Signature]  
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7. Attendu que la victime au cours de l'irruption faite chez lui, a part le maire a pu identifier d'autres individus qu'il a dénoncé a la Justice <sup>parmi lesquels le père</sup> du dit maire dénommé Lissage Viliéna, dans sa lettre de plainte en date du 15 avr. 2008;

Attendu que le 16 avril 2008, une organisation dénommée FABI a porté plainte p devant le Parquet contre Viliéna Jean Morose et ses acolytes pour destruction de Radio communautaire "Radio Nouvelle" et assassinat sur la personne de l'ecclésiaste Boniface, appert le procès verbal de constat du Juge de Paix des Irois, le 09 avr. 2008;

Attendu que Judens Isemé en date du mardi 07 octobre 2008 a pu déclarer au Cabinet d'Instruction que, le 08 Avril 2008 qu'un groupe d'individus armé ont tiré sur lui avec une arme à feu (fusil de calibre 12), il a été atteint de plusieurs projectiles; que par voie de conséquence, il a perdu un oeil; a\_t\_il ajouté que c'est Viliéna Morose qui est l'auteur intellectuel de l'incident; qu'il s'était porté à quelques mètres du même endroit;

Attendu que Judens Isemé, au cours de son interrogatoire du 07 octobre 2008, avait pointé du doigt les nommés Vilarme Duclona, Lifaito ainsi connu, Si América ainsi connu et Michelet Noel;

Attendu que Le Cabinet d'Instruction a pris le soin de confronter les deux victimes précitées à Jean Morose Viliéna. Interrogeant Lissage Martyr en présence de l'inculpé en date du 30 septembre 2008 il a dit se renfermer dans les dépositions qu'il a faites au Cabinet d'Instruction et Jean Morose Viliéna en fit autant; qu'à cette même occasion le Juge a questionné Lissage sur la présence de Viliéna, a sa face, il avança que Le Magistrat après avoir distribué des armes à ses partisans, il se mettait à couvert : laquelle déclaration le Magistrat a dit avoir formellement nié et devant Dieu et devant les hommes;

Attendu que L'incident du 08 avril 2008 a coûté X la perte d'un oeil de Judens Isemé comme l'attestent deux certificats médicaux légaux émanant des Docteur Pierre Louis Karl Rhonan affecté au centre de soins Saint Jean Baptiste de l'Anse d'Haine et de l'ophtalmologue Mshinyimana Docteur affecté à l'Institut Branda Strafford, des Cayes;

Attendu qu'entendu à titre de témoin, le nommé Villès Milaire a dit avoir entendu du qu'il y eut un incident malheureux qui s'était produit aux Irois en date du 8 avril 2008, a déclaré ne pas savoir où était le maire principal le jour où l'act a été perpétré;

Attendu que, dans le cadre de cette affaire des individus parmi lesquels le maire principal ont été arrêtés <sup>pour enquête</sup> qu'en cours de route ils ont bénéficié de main levée de mandat de dépôt; qu'dans cette optique des mandats d'arrêt ont été décerné contre d'autres fuyards qu' jusqu'à date ils n'ont pas pu être appréhendés

Jean (y) [Signature]  
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Par ces motifs et sur les conclusions conformes du Ministère public renfermées dans son requisitoire définitif en date du 21 décembre 2009; disons qu'il y a lieu à suivre contre les personnes précitées, identifiées comme dit ci-dessus; renvoyons en conséquence les sus-dits inculpés par devant le Tribunal criminel siégeant sans assistance de jurés pour être jugés conformément à la Loi sous l'inculpation de destruction de bien public ou préjudice de la communauté des Indes, de coups et blessures par balles sur les personnes de Judas Isemé et de Martyr Missego, d'assassinat et de complicité d'assassinat sur la personne de Boniface Ecclésiaste; Ordonnons qu'ils soient pris de corps et écroués dans la prison civile de Jérémie, s'ils ne s'y trouvent pas déjà et ce, jusqu'à leur jugement définitif; ordonnons en outre que toutes les pièces de la procédure soient ensemble la présente ordonnance transmises au Commissaire du gouvernement de ce ressort aux fins de dépôt.

Donné de nous, Me. Jean Gary Lundy, Juge d'Instruction au Tribunal civil de Jérémie, en notre chambre d'Instruction criminelle, sise au Palais de Justice de Jérémie, ce jourd'hui 25 janvier 2010 avec l'assistance de M. Lauchard Dolcé, greffier du Cabinet d'Instruction.

Il est ordonné à tous huissiers sur ce requis de mettre la présente ordonnance à exécution, aux Officiers du ministère public près les tribunaux de ville à y tenir la main, à tous commandants et autres agents de la force publique d'y prêter main forte lorsqu'ils en seront légalement requis.

En foi de quoi, la minute de la présente ordonnance a été signée du Juge Jean Gary Lundy et du greffier Lauchard Dolcé.

Ainsi signé : Me. Jean Gary Lundy, Juge, Lauchard Dolcé, greffier.

Collationnée  
Pour expédition conforme :

Jean G. Lundy  
Me. Jean Gary Lundy, av  
Juge d'Instruction

Lauchard Dolcé, greffier



N<sup>o</sup> 14 Debet  
22 Février 2010  
Case 3758 folio 452

ce qui constitue une présomption de culpabilité;

Attendu que Boniface David, frère de Boniface Eoclésiaste qui a descendu le fleuve de son temps dans des circonstances nébuleuses a expliqué, en date du 16 octobre 2008, au Cabinet d'Instruction les circonstances qui ont porté son frère à quitter cette terre en ce sens : "Magistrat dans la matinée du 27 juillet 2007, comme à l'accoutumée le service de la voirie de la commune des Irois, après le jour du marché le 26 juillet a été dans la rue pour ramasser les ordures laissées dans les différents cantons par les marchands. Madame Ostamie, remarquant la présence de ce service à travers les rues a déposé une quantité d'ordures pour être enlevées par les agents de la voirie. Le Magistrat Jean Morose Viliéna était ce matin, dans la rue accompagnant les agents. a fait injonction à Madame Ostamie de les retirer. Elle n'a pas obtempéré, le maire Viliéna Morose a intimé l'ordre à un de ses agents de verser une quantité d'ordure chez Madame Ostamie..... Le même jour il était 05 heures dans l'après midi, j'ai vu le maire Jean Morose Viliéna, circulant seul à moto en scandant "Kan'l fè sizè touto moune fèman pòt. Vers six (6) heures P.M., le même jour, le Magistrat Jean Viliéna a été à Matador accompagné de sa troupe. Entre temps je suis allé à l'église; y étant, j'ai été informé par Boyer que le groupe de Viliéna Morose a tué mon frère....(sic)

Attendu que cette déclaration a été répétée d'un revers de main par le maire, i ne peut n'avoir jamais été à Grand Bassin et qu'il a été informé de l'incident vers les 7 heures P.M. le 27 juillet 2007 quand on lui rapporta qu'il a eu un conflit entre deux groupes rivaux qui a coûté la vie à Boniface Eoclésiaste;

#une bonne partie de def

Attendu qu'ils ceux qui sont poursuivis pour ce crime abominable sont en cavale et font partie de la liste des personnes reprochées de destruction de bien public au préjudice de la communauté des Irois, des coups et blessures par balles sur les personnes de Juders Isemé et de Nissage Martyr; qu'une fuite de plus cette fuite volontaire constitue une présomption de culpabilité;

Attendu que le Juge instructeur ne cherche qu'à des indices de responsabilité pénale pour former sa conviction;

Attendu qu'il résulte des faits de l'instruction des indices suffisants, cardinaux de la culpabilité des nommés Jean Morose Viliéna, Hautefort Bajon, Maxène Vilsaint, Ti Américain ainsi connu, Viliéna Lucena, Martyr Renson, Boileau Pierrot, Nissage Viliéna, Monès Rencéna, Guerson Pierre, Kéléman ainsi connu, France Isemé, Jean Pierre Gardy, Agnel Jean, Jean Louis Bell, Lifaite Livert, Esta Bell, Méritus Beaublanc, Cedernier Flourimé et Michelet Noel; qu'il y a donc lieu de les renvoyer par devant une juridiction compétente de jugement pour répondre des crimes de destruction de bien public au préjudice de la communauté des Irois de coups et blessures par balles sur les personnes de Juders Isemé et Nissage Martyr, d'assassinat et de complicité d'assassinat sur la personne de Boniface Eoclésiaste;

Leun (y lue) [Signature]

L'An deux mille dix et le Vingt Février

A la requête du Commissaire du Gouvernement près le Tribunal Civil du ressort de la Grand'Anse ayant son siège de droit au Parquet de Jérémie.

J'ai Raymond Mazière.....huissier du Tribunal Civil de Jérémie y demeurant et domicilié, identifié au no. 884-166-740-4.....pour le présent exercice, soussigné, signifié, donné et laissé copie à 1. Charles Louinès, actuellement detenu en la prison civile de cette ville entre les deux guichets comme lieu de liberté et en présence du géolier qui a visé mon original où étant et parlant à M. Pholomon.....2. Jean Louis Bell, actuellement detenu en la prison civile de cette ville entre les deux guichets comme lieu de liberté et en présence du géolier qui a visé mon original où étant et parlant à M. Pholomon.....3. Lissage Viliena, actuellement detenu en la prison civile de Jérémie entre les deux guichets comme lieu de liberté et en présence géolier qui a visé mon original où étant et parlant à M. Pholomon.....

4. Michelet Noel, actuellement detenu en la prison civile de cette ville entre les deux guichets comme lieu de liberté et en présence du géolier qui a visé mon original où étant et parlant à M. Pholomon.....5. Jean Morose Viliena, demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....

6. Haute Fort Bajon, demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....6.6 Maxène Vilsaint, demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....

8. Ti Américain ainsi connu, demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....9. Vilena Duclona; demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....

10.6 Matyr Kenson, demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....11. Boileau Pierrot, demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....12. Monès Dorcena, demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....

13. Guerson Pierre, demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....14. France Isemé, demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....

15. Jean Pierre Gandy, demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....16. Agnel Jean demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....

17. Lifaite Livert, demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....18. Esta Bell, demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....

19. Meritus Beaublanc, demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....20. Cedernier Fleurine, demeurant et domicilié aux Irois en sa demeure où étant et parlant à M. Pholomon.....ainsi déclaré de l'ordonnance rendue en la chambre d'instruction criminelle ce, conformément à la loi et aux fins utiles.

Et afin que les susnommés, susdits et susqualifiés n'en ignorent je huissie susdit et soussigné leur ai étant et parlant comme dessus laissé copie à chacun d'eux copie de mon présent exploit dont le coût est de.....gdes. Dont acte.

On a dit pour l'ordonnance

Raymond Mazière  
Huissier.

Vise par chef de poste en date du 29/2/2010

Dumfries

N no 14 Rebet  
22 Février 2010  
Case. 3758 folio 452

Charles J. Wilson

Concluding Order of Indictment, No. 736/08 (Ct. First Instance Jérémie Jan. 25, 2010) (English translations) [VIL0001-12, VIL0042-51]

Original

Liberty

Equality

Fraternity

Republic of Haiti

In the name of the Republic

Final order dossier No. (illegible)

We, Attorney Jean Gary Lundy, the examining judge of the High Court of Jérémie, accompanied by Mr. (illegible), court clerk in the case of the (illegible) Jean Morose Viliéna, (illegible) (deceased) Bajon, (illegible) (deceased) (illegible) ...

... Charged with murder and accessory to murder of Boniface Ecclésiaste, of destruction of public property to the detriment of the community of Les Irois, of shooting and wounding (illegible) and of (illegible) ...

In the examination (illegible) of the case of Jean Morose Viliéna, age 36, economist by profession, born in Les Irois, residing and domiciled there, Hautefort Bajon, (illegible) Vilsaint, Ti Americain (illegible), Boileau Pierrot, (illegible) Viliéna, (illegible), his alias, Isemé, Jean-Pierre (illegible), Jean Louis (illegible), fugitive Michelet Noel, accused in the murder of Boniface Ecclésiaste, destruction of public property to the detriment of the community of Les Irois, of shooting and wounding Judge Isemé and of (illegible) Martyr;

- In view of the Prosecutor's indictment of August 9, 2006;
- Sixteen arrest warrants;
- 2 medical certificates for Isemé (illegible) on April 21, 2008 and April 29 of the same year;
- Transcript of the Magistrate's Court of Les Irois on April 9, 2008;
- Medical certificate of (illegible) Martyr on May 5, 2008;
- Subpoena duces tecum of May 23, 2008 for the purposes of indictment;
- Indictment for the purposes of (illegible) and of the committal order of June 22, (illegible)
- Medical certificate of (illegible) Lissage Martyr;
- Motion from Viliéna Morose to Lobalto Edmond, (illegible) on October 7, 2008,

(Handwritten script)

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- Order for the purposes of handing down the committal order on (illegible);
- Correspondence of the Prosecutor on (illegible) addressed (illegible) of the Ministry of Planning / Port-au-Prince.
- Order for (illegible) of the committal order of December 4, 2008.
- Motion by Attorney Richardson Philippe made in the Chambers of the Examining Judge on September 30, 2008,
- Copies of the motions made before Mr. Sainte Compte Lobalto Edmond on October 8, 2008.
- Motion made in the Chambers of the Examining Judge on October 10, 2008 by the chamber Attorneys Jean Richardson Philippe and (illegible).
- Correspondence from the Minister of the Interior and of Territorial Collectives to Mr. (illegible) of Les Irois on July (illegible).
- Copy of the (illegible) warrant issued against (illegible) on July 27, 2007 by the Justice of the Peace of Les Irois (illegible);

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- Correspondence addressed to the Chambers of the Examining Judge by a group of citizens of Les Irois on October 10, 2008;
- Subpoena duces tecum of the Chambers of the Examining Judge on October 16, 2009;
- Submissions by the public ministry relative to the issuing of arrest warrants on March 17, 2009;
- Submissions in favor of the accused Antoine Jimmy on March 11, 2009;
- Motion made in the Chambers of the Examining Judge by Jean Morose Viliéna dated October 7, 2008 by his lawyer Attorney Jacques Robert Juste of the bar of Jérémie;
- Motion made in the Chambers of the Examining Judge by Vilsaint Maxène February 2, 2009;



- Lawsuit filed in the Chambers of the Examining Judge by (illegible) against the principal mayor of Les Irois, Mr. Viliéna Morose;
- Motion made in the Chambers of the Examining Judge by Attorney Richardson Philippe in favor of the principal Mayor of the municipality of Les Irois Jean Viliéna Morose on Oct. 1, 2008;
- Order for the purposes of issuing arrest warrants on March 5, 2009;
- A motion made on January 29, 2009 in the Chambers of the Examining Judge by the accused Jermy Antoine and Monès Dorcena;
- Cross examination of the accused Maxène Vilsaint on January 29, 2009;
- Committal order handed down in favor of accused Jean Morose Viliéna;
- Submissions by the public ministry dated December 4, 2008 relative to the committal order handed down in favor of Jean Morose Viliéna.
- Subpoena duces tecum of the Chambers of the Examining Judge for the purpose of handing down the order of incarceration dated December 4, 2008;
- Medical certificate issued by Doctor Joseph Nicolas Petit relative to the state of health of Nissage Martyr on August 18, 2008;
- Lawsuit filed with the Prosecutor of Jérémie by Nissage Martyr on April 15, 2008;
- Filing of a suit by (illegible) on April 16, 2008 with Prosecutor in this jurisdiction;
- Inventory of the file dated December 4, 2008;
- Cross examination of the accused Monès Dorcéna on October (illegible), 2008;
- Cross examination of Wilfranc Larioux on October 7, 2008;
- Cross examination of Madame Jeamil St. Fil on January 17, 2009;
- Cross examination of the accused Vital Gérard in the Chambers of the Examining Judge on January 17, 2009;
- Cross examination of the accused Nissage Martyr on September 25, 2008;
- Cross examination of the accused (illegible) Isemé on October 7, 2008;
- Confrontation dated September 30, 2008 between Jean Morose Viliéna and Nissage Martyr in the courtroom;
- Cross examination of (illegible) Hilaire on October 9, 2008;
- Confrontation between Morose Viliéna and David Boniface on December 3, 2008;

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- Cross examination of the accused Boniface David on October 16, 2008 in the CI;
- The Prosecutor's final indictment of December 21, 2009;
- The present order;

Whereas on April 15, 2009, Nissage Martyr filed suit against Viliéna and his henchmen who, it is said, destroyed his "Radio Nouvelle" station and also made an attempt on his life by opening fire on him;

Whereas the persons responsible for the organization called TADI had for their part, by a complaint letter dated April 16, 2008 understood the prosecutor publicly presented a motion against Jean Morose Viliéna and his acolytes for: Destruction of community station "Radio Nouvelle", murder of Ecclésiaste Boniface;

Whereas on April 16, 2008, the Superintendent of the Government in this jurisdiction, through his indictment, required the Examining Judge to open an information against the accused Viliéna Morose and his acolytes for the deeds they are accused of;

Whereas following the transmission of an official report by the Justice of the Peace of Les Irois, medical certificates of the accused: Nissage Martyr and Judens Isemé as victims of the actions perpetrated on April 8, 2008, the Examining Judge, following his (illegible) communique, has (illegible) the Superintendent of the Government because of the principle of the right to prosecute from the right to investigate, to submit to him his indictment because of these facts which he deems as being new facts;

Whereas on June 9, 2008, the Superintendent of the Government's indictment based on these new facts was forwarded to the Examining Judge;

Whereas the terms of the information, the examination of one of the principal authors of these actions submitted to the Justice, Jean Morose Viliéna has effectively acknowledged that there had been an incident leading to the destruction of station "Radio Nouvelle" as well as injuries;

Whereas he prosecuted by way of explanation of those facts which unfolded thus: "That on April 8, 2008, between 11 and 12 o'clock, Josy Isemé, a secondary school student in Les Irois, pointed his weapon at him and took refuge in the radio station's premises.

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Thus, a fraction of the discontented population headed that place where a conflict was about to break out";

Whereas he did not deny that Radio Nouvelle on that day was sacked and that there were also wounded persons;

Whereas among the number of wounded Nissage Martyr had his right leg amputated because of multiple gunfire wounds and Juders Isemé, deprived of his right eye because of multiple puncture wounds caused by a firearm as stated by (illegible) certificates.

Whereas Jean Morose Viliéna was seen leading his men armed with clubs, machetes, stones, firearms which (illegible) impose their law;

Whereas he was also denounced by Boniface David as the author of the murder of his brother Boniface Ecclésiaste who was, he said, killed in his place on the evening of July 27, 2007;

Whereas there is cause for bringing Jean Morose Viliéna and his clearly identified men before a competent court to answer (illegible);

Whereas (illegible) arrest warrants (illegible) Examining Judge;

Whereas under criminal law, flight constitutes a presumption of guilt;

Whereas there is cause also to speak of a connection in the case of the alleged violations of the law by Jean Morose Viliéna and his gang;

Whereas the Code of Criminal Examination relative to (illegible) violations of the law obliges the Examining Judge to rule on the entirety in a single decision in (illegible) the cause before the criminal court which is in session without a Jury;

#### CLOSING ARGUMENTS

#### FOR THE PURPOSE OF HANDING OVER FOR CRIMINAL TRIAL WITHOUT A JURY

Whereas there is cause to bring charges against Mr. Jean Morose Viliéna, Hautefort Bajon, Maxène Vilsaint, alias Ti Américain, Viliéna (illegible), Martyr Kenson, Boileau Pierrot, Lissage Viliéna, (illegible) Dorcena, (illegible) Pierre, alias Kéléman, France Isémé, Jean Pierre (illegible), Agnal Jean, Jean Louis Bell, Lifaite Livert, (illegible) Bell, Méritus (illegible), (illegible), Michelet Noel;, all of them property owners, domiciled in Les Irois, for having committed the crime of murder and accessory to murder of Boniface Ecclésiaste, of destruction of public property to the detriment of the community of Les Irois, of shooting and wounding thereby occasioning the amputation of the right leg of Nissage Martyr and the loss of the right eye of Judge Isemé;

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Crimes tried and punished under articles 241 et seq., 356 et seq., 251, 255 et seq. of the Haitian penal code.

In view of Articles 112, 115, 119 and 120 combined of the Code of Criminal Examination,

Call on His Honor the Examining Judge to rule that there are grounds for charges against: Mr. Jean Morose Viliéna, Hautefort Bajon, Maxène Vilsaint, alias Ti Américain, Viliéna Duclona, Martyr Kenson, Boileau Pierrot, Lissage Viliéna, (illegible) Dorcena, (illegible) Pierre, alias

Kéléman, France Isemé, Jean Pierre Gardy, Agnel Jean, Jean Louis Bell, Lifaite Livert, Esta Bell, Méritus Beaublanc, Cedernier Fleuriné, Michelet Noel;, all of them property owners, domiciled in Les Irois, for having committed the crime of murder and accessory to murder of Boniface Ecclésiaste, of destruction of public property to the detriment of the community of Les Irois, of shooting and wounding thereby occasioning the amputation of the right leg of Nissage Martyr and the loss of the right eye of Judge Isemé, to hand over to the criminal court to be tried without a Jury according to the law.

And that shall be Justice.

Prosecutor in the High Court of Jérémie, this December 21, 2009, in the 206th Year of Independence.

.....  
(illegible) Auguste, Mag.  
Superintendent of the  
Government.

Whereas by means of the indictment by the prosecutor in this jurisdiction on June 9, 2009 the Chambers of the Examining Judge in Jérémie (illegible) a prosecution against the aforesaid accused for the indictments (illegible);

Whereas Nissage Martyr, one of the victims explained (illegible) on April 8 around 1 p.m. That he was in his garden when his cousin Julie Souverain came home and announced that a group of individuals was preparing to attack his house with the intention of taking over the radio station lodged there, that that group led by the mayor of the municipality of Les Irois, Jean Morose Viliéna, carrying a 12-gauge shotgun, drew it against him and shot him in the leg, causing the amputation of one of his limbs (illegible) appears on the medical certificate (illegible) at the Hôpital Lumière, on April (illegible) 2008;

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Whereas the victim during the break-in at his home, (illegible) the mayor was able to identify other individuals who he denounced to the judicial authorities, among whom was the father of the aforesaid mayor named Lissage Viliéna, in his complaint letter of April 15, 2008;

Whereas on April 16, 2008, an organization called (illegible) filed suit with the prosecutor against Viliéna Jean Morose and his acolytes for the destruction of community station “Radio Nouvelle” and the murder of Ecclésiaste Boniface, as it appears in the notes of the Justice of the Peace of Les Irois on April 9, 2008;

Whereas Judens Isemé on Tuesday, October 7, 2008 was able to declare in the Chambers of the Examining Judge that, on April 8, 2008, a group of armed individuals opened fire on him with a firearm (12-gauge shotgun), that he was wounded by several projectiles, that consequently he lost an eye; he added that it was Viliéna Morose who was the mastermind of the incident, that he positioned himself a few meters from the (illegible);

Whereas Juders Isemé, during his cross examination on October 7, 2008, pointed to the accused (illegible) Duclona, alias Lifaité, alias Ti Américain and Michelet Noel;

Whereas the Chambers of the Examining Judge took care to confront Jean Morose Viliéna with his two victims. Questioning Nissage Martyr in the presence of the accused on September 30, 2008, he said he was confining himself to the depositions he gave in the Chambers of the Examining Judge and to that of Jean Morose Viliéna, that on that same occasion the Judge questioned Nissage about the presence of Viliéna; to his face, he suggested that the Magistrate, after having distributed weapons to his partisans, took cover: the Magistrate formally denied that declaration before God and before Man;

Whereas the incident of April 8, 2008 cost one of Juders Isemé’s eyes as have attested two medical-legal certificates by doctors Pierre Louis Karl (illegible) Saint Jean Baptiste (illegible) and of the ophthalmologist (illegible) Pasteur (illegible) of the (illegible) Institute of Les Cayes;

Whereas he was heard as a witness, the accused (illegible) spoke of having (illegible) there had been an unfortunate incident in Les Irois on April 8, 2008, he declared that he did not know where the principal mayor was on the day when the deed was done;

Whereas in this affair certain individuals, among them the principal mayor, were (illegible) benefited from the handing down of the committal order which, from this standpoint, arrest warrants were issued against other fugitives who so far have not been apprehended, which constitutes a presumption of guilt.

(Illegible handwritten signature)

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Whereas Boniface David, brother of Boniface Ecclésiaste who (illegible) the river of his (illegible) explained on October 16, 2008 in the Chambers of the Examining Judge the circumstances of his brother leaving this world; “Magistrate on the morning of July 27, 2007, as customary the sanitation department of the municipality of Les Irois, after the market day on July 26, was in the streets collecting trash left behind by the merchants in the different thoroughfares. Madame (illegible), noticing the effectiveness of the service in the streets put a quantity of garbage there to be picked up by the (illegible) of the (illegible). Magistrate Jean Morose That morning, Viliéna was in the street accompanying his agents. (Illegible) made a (illegible) to Madame (illegible) to pick it up. She did not (illegible), the mayor Viliéna Morose ordered one of his agents to dump a quantity of garbage at the house of Madame (illegible). . . . . The same day it was at 5 p.m. when I saw the mayor Jean Morose Viliéna driving alone (illegible) while chanting [in the Creole language]. Around 6 o’clock (illegible) on the same day, Magistrate Jean Viliéna was at Matador accompanied by his troupe. Meanwhile, I went to church; while there, I was informed by Boyer that Viliéna’s group had killed my brother. ... (sic)

Whereas that declaration was brushed off by the mayor, he replied that he was never (illegible) was informed of the incident around 7 o’clock (illegible) on July 27, 2007 when it was reported to him that there was a conflict between two rival groups which cost the life of Boniface Ecclésiaste;

Whereas those who are prosecuted for this abominable crime are at large and belong to the list of persons accused of destruction of public property to the detriment of the community of Les Irois, of shooting and wounding Juders Isemé and Nissage Martyr; once again such voluntary flight constitutes a presumption of guilt.

Whereas the Examining Judge does not seek evidence of criminal responsibility in order to form his opinion;

Whereas the facts sufficiently indicate the cardinal guilt of the accused Jean Morose Viliéna, Hautefort Bajon, Maxène Vilsaint, alias Ti Américain, Viliéna (illegible) Martyr (illegible), Boileau Pierrot, Lissage Viliéna, (illegible), alias Kéléman, France Isemé, Jean Pierre Gardy, Agnel Jean, Jean Louis Bell, Lifaite Livert, Esta Bell, Méritus (illegible), (illegible), and Michelet Noel; that there is cause to hand them over to a competent court for trial to answer charges of destruction of public property to the detriment of the community of Les Irois, of shooting and wounding Juders Isemé and Nissage Martyr, of murder and accessory to murder of Boniface Ecclésiaste;

(Illegible handwritten signature)

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On these grounds and on the submissions (illegible) by the public ministry (illegible) his final indictment dated December 21, 2009; we say there is a case to bring against the aforesaid persons, identified stated above; we consequently hand over the aforesaid accused to the criminal court sitting in a bench trial in order to be tried according to the law on charges destruction of public property to the detriment of the community of Les Irois, of shooting and wounding Juders Isemé and Nissage Martyr, of murder and accessory to murder of Boniface Ecclésiaste; we order that they be bodily transferred to the civil prison in Jérémie if they are not there already and be held there until their final verdict; we order furthermore that all procedural evidence be (illegible) transmitted to the Superintendent of the government (illegible) for said purposes.



Given by us, Attorney Jean Gary Lundy, Examining Judge in the Civil Court of Jérémie, in our Chamber of Criminal Examination, located in the Court House of Jérémie, this January 25; (illegible) with the assistance of Mr. (illegible) clerk of the Chambers of the Examining Judge.

All bailiffs and every public ministry are ordered to execute this order; all public officers of the civil courts; all commanders and other law enforcement officials are ordered to help when and where they are legally required to do so.

In witness whereof the details of this order is signed by Judge Jean Gary Lundy and by the clerk (illegible).

So signed: Attorney Jean Gary Lundy, Judge \_ (illegible), clerk

Collated

For delivery

(signature)  
Attorney Jean Gary Lundy, lawyer  
Examining Judge

(signature)  
(illegible), Clerk

Handwritten notation  
(illegible) 14 (illegible)  
February 22, 2010  
Case 3758 folio 452



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COUNTY OF: *Suffolk*

**CERTIFICATE OF ACCURACY**

Natalia Taylor, on behalf of Language Connections, certifies:

1. That our translator(s) are proficient in both the **French** and the **English** languages.
2. That we have made the attached translation of the below mentioned original document(s) from **French** into **English** and hereby certify that the same is a true and complete translation to the best of our translator(s) knowledge, ability and belief.
3. Document name:
  - The year 2010 February 20

Signature: 

Subscribed to and sworn before me this 7<sup>th</sup> day of February, 2018 by Natalia Taylor.

Notary Public  
My commission expires: 4 Dec 2020





[handwritten: Original]

Liberty Equality Fraternity  
Republic of Haiti  
In the name of the Republic

1 -

Closure of proceedings - Case No. 736/08

We, Jean Gary Lundy, Esq., Investigating Judge of the Court of First Instance of Jérémie, assisted by Lauchard Docé, registrar in the matter of Jean Morose Viliéna, Haute Bejon (deceased), Maxène Vilesaint (deceased), Ti Américain aka, Viliéna Duclona, Martyr Kenson, Boileau Pierrot, Lissage Viliéna, Monès Dorcena, Guerson Pierre, Keleman aka, France Isemé, Jean Pierre Gardy, Agnel Jean, Jean Louis Bell, Lifaite Livert, Esta Bell, Méritus Beaublanc (American), Cedernier Fleurine, Michelet Noel, accused of murder and complicity in the murder of Boniface Ecclésiaste, destruction of public property to the detriment of the community of Irois, the beating and bullet wounds of Jude Ismé and Nissage Martyr handed down the following order:

Whereas the investigation opened and continued in the case of Jean Morose Viliéna, 36 year-old economist born in Irois and residing and domicile there, Hautefort Bajon, Maxène Vilesaint, Ti Américain aka, Viliéna Duclona, Martyr Kenson, Boileau Pierrot, Lissage Viliéna, Monès Dorcena, Guerson Pierre, Keleman aka, France Isemé, Jean Pierre Gardy, Agnel Jean, Jean Louis Bell, Lifaite Livert, Esta Bell, Beaublanc Meritu, Cedernier Fleuriné, Michelet Noel on the run, accused of the murder of Boniface Ecclésiaste, destruction of public property to the detriment of the community of Irois, the beating and bullet wounds of Jude Ismé and Nissage Martyr;

- In view of the public prosecutor's demand to the investigating judge to make an inquiry into reported facts dated 08/08/09
- Sixteen (16) arrest warrants
- Two medical certificates of Isemé Juders dated April 21, 2008 and April 29 of the same year
- Establishment of fact of the District Civil Court of Irois dated 04/09/08
- Medical certificate of Nissage Martyr dated 05/05/08
- Notification to proceed dated 05/23/08 for the purposes of the public prosecutor's demand to the investigating judge to make an inquiry into reported facts
- Prosecutor's address for the purpose of withdrawal of the committal order dated June 22, 2008
- Medical certificate of Vilsaint Maxène dated 08/08/09
- Order of the Investigating Office to withdraw the committal order dated 06/19/[text cut off]
- Photographs of Lissage Martyr
- Petition from Viliéna to Morose to Libelto Edmond, Vilès Edmond, Sanite Comte on October 7, 2008

[signatures]

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- Order for the purpose of withdrawal of the committal order dated 05/05/09
- Correspondence from the Prosecutor's Office dated June 10, 2000, sent to the responsible party at the Ministry of Planning/Port-au-Prince
- Notification to proceed for the purpose of withdrawal of the committal order dated 12/04/09
- Petition of Richardson Philippe, Esq. sent to the Investigating Office on September 30, 2008
- Copies of the petitions sent to Sanite Compte Lobelto Edmond dated October 8, 2008
- Petition sent to the Investigating Office on October 10, 2008, by the office of attorney Jean Richardson Philippe and Mihumilius Garçon
- Correspondence from the Ministry of the Interior and Territorial Communities to Viliéna Morose, Mayor of Irois, dated July 25, 2007
- Copy of the order to the witness to appear for Nissage Martyr dated July 27, 2007 by the Irois District Judge Saint Jean Bell

[signature]

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- Correspondence sent to the Investigating Office by the group of citizens of Irois dated October 10, 2008
- Notification to proceed from the Investigating Office dated October 16, 2009
- Conclusions of the Public Prosecutor's Office relative to the issue of warrants for arrest dated March 17, 2009
- Conclusions made in favor of Antoine Jimmy dated March 11, 2009
- Petition sent to the Investigating Office by Jean Morose Viliéna dated October 7, 2008 through his attorney, Jacques Robert Juste of the Jérémie office
- Petition sent to the Investigating Office by Vilsaint Maxène dated February 2, 2009
- Complaint filed with the Investigating Office by Juders Isemé against the principal mayor of Irois, Mr. Viliéna Morose
- Petition sent to the Investigating Office by Richardson Philippe, Esq. in favor of the principal mayor of the town of Irois, Jean Viliéna dated October 1, 2008
- Order for the purpose of issuing warrants for arrest dated March 5, 2009
- Petition dated January 29, 2009 sent to the Investigating Office by Jermy Antoine and Monès Dorcena
- Examination of Maxène Vilsaint dated January 29, 2009
- Order to withdraw the committal order for Jean Morose Viliéna
- Conclusions of the Public Prosecutor's Office dated 12/04/08 relative to withdrawal of the committal order for Jean Morose Viliéna
- Notification to proceed from the Investigating Office for the purpose of withdrawal of the committal warrant dated December 4, 2008
- Medical certificate issued by Dr. Joseph Nicolas Petit relative to the condition of Nissage Martyr's health dated August 18, 08
- Complaint filed with the Jérémie Prosecutor's Office by Nissage Martyr dated April 15, 2008
- Complaint made by the TADI Organization on April 16, 2008 to the Prosecutor's Office in this jurisdiction
- Inventory of the file dating from December 4, 2008
- Examination of Monès Dorcéna dated October 15, 2008
- Examination of Wilfranc Lamieux dated October 7, 2008
- Examination of Mrs. Jeamil St Fil dated January 17, 2009
- Examination of Vital Gérard at the Investigating Office on January 17, 2009
- Examination of Nissage Martyr dated September 25, 2008
- Examination of Juders Isemé dated October 7, 2008
- Confrontation of Jean Morose Viliéna and Nissage Martyr at the Investigating Office on 09/30/08
- Examination of Ville Hilaire dated October 9, 2008
- Confrontation of Jean Morose Viliéna and David Boniface on December 3, 2008

[signatures]

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- Examination of Boniface David dated October 16, 2008 at the Investigating Office
- Final address of the Prosecutor's Office dated December 21, 2009
- This order

Whereas on April 15, 2008, Nissage Matyr filed a complaint against Viliéna aka and his lackeys, who, he said, destroyed his home housing the "Radio Nouvelle" radio station and also threatened his life by shooting at him.

Whereas the responsible parties at the TADI Organization took their side through a complaint letter dated April 16, 2008, to see the Prosecutor's Office take public action against Jean Morose Viliéna and his accomplices for: destruction of the community radio station "Radio Nouvelle," the murder of Ecclésiaste Boniface:

Whereas on April 16, 2008, the Government Commissioner in this jurisdiction, through its demand for an inquiry into reported facts, requested that the Investigating Judge open an investigation of Viliéna Morose and his accomplices due to these facts to which exception is taken.

Whereas following the transmission of an establishment of fact of the District Judge of Irois, medical certificates of: Nissage Martyr and Juders Isemé, as victims of these acts perpetrated on April 8, 2008, the Investigating Judge, pursuant to the notification to proceed, contacted the government commissioner due to the principle of separation of the right to prosecute and the right to investigate, to submit to him his demand for an inquiry into reported facts due to these facts that he believes are new.

Whereas on June 9, 2008, the demand for an inquiry into reported facts of the Government Commissioner concerning these new facts was sent to the Investigating Judge.

Whereas in the information file, the examination of one of the principal perpetrators of these acts submitted to the Court Jean Morose Viliéna effectively acknowledged that there was an incident that led to the destruction of the "Radio Nouvelle" radio station as well as the injuries.

Whereas he continued by way of explanation of these facts, which occurred "on April 8, 2008, between 11 a.m. and 12 p.m., Josy Isemé, a student in the third form at Irois high school pointed his weapon at him and then fled to the location housing the radio station.

[signatures]

5

- Therefore, a fraction of the unhappy population went there and a conflict broke out.”

Whereas he did not deny that Radio Nouvelle on that day, had been [illegible] and that there were also injuries.

Whereas due to the number of these injuries Nissage Martyr had his right leg amputated as a result of multiple wounds from a firearm and Juders Isemé’s right eye was removed following multiple punctiform injuries caused by a fire arm appearing in the medical certificates issued to them [illegible].

Whereas Jean Morose Viliéna was seen leading these men armed with sticks, machetes, rocks and firearms who were volunteering to impose their law.

Whereas he was also reported by David Boniface as the perpetrator of the murder of his brother Ecclésiaste Boniface who was, he said, killed in his place on the evening of July 27, 2007.

Whereas it is necessary to bring Jean Morose Viliéna and his clearly identified men before the competent court to answer for all these facts against them.

Whereas [illegible] escaped, contribution of the warrant for arrest issued against them by the Investigating Judge.

Whereas in criminal law, escape is a presumption of guilt.

Whereas it was also necessary to talk about the close connection in the case of these offenses for which Jean Morose Viliéna and his gang are reproached.

Whereas the Code of Criminal Procedure relative to connected offenses requires the Investigating Judge to rule on everything through a single decision by sending the case back to the criminal court, which will be held without jury assistance.

FINAL PETITIONS

FOR THE PURPOSE OF SENDING TO THE CRIMINAL COURT WITHOUT JURY ASSISTANCE

Whereas it is necessary to proceed against: Jean Morose Viliéna, Haute Bajon, Maxène Vilsaint, Tia Américain aka, Viliéna Duclona, Martyr Kenson, Boileau Pierrot, Lissage Viliéna, Monès Dorcena, Guerson Pierre, Kéléman aka, France Isemé, Jean Pierre Gardy, Agnel Jean, Jean Louis Bellí, Lifáite Livert, Esta Bell, Meritus Beaublanc, Cedernier Fleurine, Michelet Noel, all landowners residing and domiciled in Irois, for having committed the crime qualified as the murder and complicity in the murder of Boniface Ecclésiaste, destruction of public property to the detriment of the community of Irois

[signatures]



6

beating and bullet wounds causing the amputation of Nissage Martyr's right leg and the loss of Jude Ismé's right eye.

Facts set forth and punishable by Article 241 et seq., 356 et seq., 251, 255 et seq. of the Haitian Criminal Code.

In view of Articles 112, 113, 119 and 120 combined of the Code of Criminal Procedure,

Requests, if it pleases the Investigating Judge, to rule that it is necessary to proceed against: Jean Morose Viliéna, Haute fort Bajon, Maxène Vilsaint, Ti Américain aka, Viliéna Duclona, Martyr Kenson, Boileau Pierrot, Lissage Viliéna, Monès Dorcena, Guerson Pierre, Kéléman aka, France Isemé, Jean Pierre Gardy, Agnel Jean, Jean Louis Bell, Lifaite Livert, Esta Bell, Méritus Beaublanc, Cedernier Fleuriné, Michelet Noel, all landowners residing and domiciled in Irois, for having committed the crime qualified as murder and complicity in the murder of Boniface Ecclésiaste, destruction of public property to the detriment of the community of Irois, beating and bullet wounds causing the amputation of Nissage Martyr's right leg and the loss of Jude Ismé's right eye, send them to the criminal court without jury assistance to be judged there in accordance with the law.

Let justice be done.

Prosecutor of the Court of First Instance of Jérémie, December 21, 2009, the 206<sup>th</sup> year of Independence.

-----  
[illegible name] August, Judge  
Government Commissioner

Whereas through the demand of the public prosecutor in this jurisdiction for an inquiry into reported facts dated June 9, 2009, the Criminal Investigating Office of Jérémie institutes proceedings against the aforementioned defendants on the charges listed above.

Whereas Nissage Martyr, one of the victims, explains on Tuesday of this April at approximately one (1) o'clock in the afternoon, he went into his yard and when he was back, his cousin Julie Souvraïn [illegible] that a group of individuals was about to attack his house in order to remove the radio station that was housed there. This group was led by the mayor of the town of Irois, Jean Morose Viliéna, who was carrying a twelve (12) gauge gun; he drew it on him, with bullets hitting his leg, thereby causing the amputation of one of the lower extremities as stated on the medical certificate issued by Dr. Joseph Nicolas Petit, performed at Hôpital Lumière on April [illegible number], 2009.

[signatures]

7

Whereas the victim was able, during the interruption at his home by the mayor, to identify other individuals whom he reported to the legal system, including the mayor's fa [text cut off], Lissage Viliéna, in his complaint letter dated April 15, 2008.

Whereas on April 16, 2008, an organization called TADI made a complaint to the Prosecutor's Office against Viliéna Jean Morose and his accomplices for the destruction of the community radio station "Radio Nouvelle" and murder of Ecclésiaste Boniface, appearing in the establishment of fact of the District Judge of Irois on April 9, 2008.

Whereas on Tuesday, October 7, 2008, Juders Isemé declared to the Investigating Office that on April 8, 2008, a group of armed individuals shot at him with a firearm (12-gauge shotgun), and he was hit by several projectiles. Consequently, he lost an eye. He added that Viliéna Morose was the mastermind of the incident, that he was carried a few meters from the [illegible].

Whereas Juders Isemé, during the course of his examination on October 7, 2008, pointed the finger at Vilerme Duclona, Lifaite aka, Ti Américain aka and Michelet Noel.

Whereas the Investigating Office took care to have the two aforementioned victims confront Jean Morose Viliéna. Questioning Nissage Martyr in the presence of the defendant on September 30, 2008. He said he withdrew into the depositions he made in the Investigating Office and Jean Morose Viliéna did the same. On this same occasion, the judge asked Nissage about Viliéna's presence to his face; he maintained that the officer of the law, after having distributed the weapons to his supporters, took cover. The officer of the law said he formally denied that statement before God and men;

Whereas the incident of April 8, 2008 caused Juders Isemé to lose an eye as certified in the legal medical certificates issued by Dr. Pierre Louis Karl [illegible] made Saint Jean Baptiste [illegible] ophthalmology [illegible] carried out at Institut Brenda Strafford des Cayes

Whereas hearing the witness, Villèe Hilaire, he said he heard that there was an unfortunate incident that occurred in Irois on April 8, 2008, and declared not to know where the principal mayor was on the day when the action was perpetrated.

Whereas in the scope of this matter, individuals including the principal mayor, were [illegible] for the investigation [illegible] they benefitted from withdrawal of the committal order; with this in mind, warrants for arrest were issued for the other fugitives who, to date, could not be apprehended.

[signatures]

8

which constitutes the presumption of guilt.

Whereas Boniface David, the brother of Boniface Ecclésiaste who [illegible] under murky circumstances explained on October 15, 2008 to the Investigating Judge the circumstances that brought his brother to [illegible] this land in this direction: "Officer of the law, on the morning of July 27, 2007, as usual, the road service of the town of Irois, following market day on July 26, was in the street to clean up garbage left in the different roads by the merchants. Ms. Ostamie, noted the presence of this service through the [illegible], and left some garbage to be removed by the road workers. Officer of the law, Jean Morose Viliéna was in the street that morning accompanying the worker and ordered Ms. Ostamie to remove it. She did not [illegible], and the mayor Viliéna Morose ordered one of his workers to dump some garbage in Ms. Ostomie's house....

The same day, it was 5 in the afternoon. I saw the mayor, Jean Morose Viliéna circulating alone [creole text]. Around six (6:00) on the same day, the officer of the law, Jean Viliéna, was at Matador accompanied by this group. In the meantime, I went to church. There, I was informed by Boyer that the Viliéna Morose group killed my brother... [sic.].

Whereas this statement was rejected by the mayor, he replied that he was never in Grand Bassin and that he was informed of the incident at about 7 p.m. on July 27, 2007 when it was reported to him that there was a conflict between two rival groups that cost Boniface Ecclésiaste his life.

[margin:]

# a good part of

Whereas those who are prosecuted for this terrible crime are on the run and on the list of persons accused of destruction of public property to the detriment of the community of Irois, the beating and bullet wounds of Juders Ismé and Nissage Martyr; that once again, this voluntary flight constitutes a presumption of guilt.

Whereas the Investigating Judge seeks evidence of criminal liability in order to form his conviction.

Whereas the facts of the investigation show sufficient, cardinal evidence of the guilt of Jean Morose Viliéna, Hautefort Bajon, Maxène Vilsaint, Ti Américain aka, Viliéna Duclona, Martyr Kenson, Boileau Pierrot, Lissage Viliéna, Monès Dorcéna, Guerson Pierre, Kéléman aka, France Isemé, Jean Pierre Gardy, Agnel Jean, Jean Louis Bell, Lifaite Livert, Esta Bell, Méritus Beaublanc, Cedernier Fleuriné, Michelet Noel; it is therefore necessary to send them to the competent court for judgment to answer for the crimes of destruction of public property to the detriment of the community of Irois, the beating and bullet wounds of Juders Ismé and Nissage Martyr, murder and complicity in the murder of Boniface Ecclésiaste.

[signatures]

8

which constitutes the presumption of guilt.

Whereas Boniface David, the brother of Boniface Ecclésiaste who [illegible] under murky circumstances explained on October 15, 2008 to the Investigating Judge the circumstances that brought his brother to [illegible] this land in this direction: "Officer of the law, on the morning of July 27, 2007, as usual, the road service of the town of Irois, following market day on July 26, was in the street to clean up garbage left in the different roads by the merchants. Ms. Ostamie, noted the presence of this service through the [illegible], and left some garbage to be removed by the road workers. Officer of the law, Jean Morose Viliéna was in the street that morning accompanying the worker and ordered Ms. Ostamie to remove it. She did not [illegible], and the mayor Viliéna Morose ordered one of his workers to dump some garbage in Ms. Ostomie's house.... The same day, it was 5 in the afternoon. I saw the mayor, Jean Morose Viliéna circulating alone [creole text]. Around six (6:00) on the same day, the officer of the law, Jean Viliéna, was at Matador accompanied by this group. In the meantime, I went to church. There, I was informed by Boyer that the Viliéna Morose group killed my brother... [sic].

Whereas this statement was rejected by the mayor, he replied that he was never in Grand Bassin and that he was informed of the incident at about 7 p.m. on July 27, 2007 when it was reported to him that there was a conflict between two rival groups that cost Boniface Ecclésiaste his life.

[margin:]

# a good part of

Whereas those who are prosecuted for this terrible crime are on the run and on the list of persons accused of destruction of public property to the detriment of the community of Irois, the beating and bullet wounds of Juders Ismé and Nissage Martyr; that once again, this voluntary flight constitutes a presumption of guilt.

Whereas the Investigating Judge seeks evidence of criminal liability in order to form his conviction.

Whereas the facts of the investigation show sufficient, cardinal evidence of the guilt of Jean Morose Viliéna, Hautefort Bajon, Maxène Vilsaint, Ti Américain aka, Viliéna Duclona, Martyr Kenson, Boileau Pierrot, Lissage Viliéna, Monès Dorcéna, Guerson Pierre, Kéléman aka, France Isemé, Jean Pierre Gardy, Agnel Jean, Jean Louis Bell, Lifaite Livert, Esta Bell, Méritus Beaublanc, Cedernier Fleuriné, Michelet Noel; it is therefore necessary to send them to the competent court for judgment to answer for the crimes of destruction of public property to the detriment of the community of Irois, the beating and bullet wounds of Juders Ismé and Nissage Martyr, murder and complicity in the murder of Boniface Ecclésiaste.

[signatures]

[illegible number]

For these reasons, and based on the proper conclusions of the prosecution, contained in his final address dated December 21, 2009, we hold that it is necessary to proceed against the aforementioned persons as stated above; consequently, we are sending the aforementioned defendants before the Criminal Court without jury assistance so that they may be judged in accordance with the law on the charges of destruction of public property to the detriment of the community of Irois, the beating and bullet wounds of Juders Ismé and Nissage Martyr, murder and complicity in the murder of Boniface Ecclésiaste. We order that they be arrested and locked up in the Jérémie civil prison if they are not already there, and this until their final judgment. We further order that all documents from the proceedings be [illegible]. This failure to appear for trial transmitted to the government commissioner in this jurisdiction for [illegible] purposes.

Granted by us, Jean Gary Lundy, Esq., Investigating Judge of the Civil Court of Jérémie, in our Criminal Investigation Division located in the Law Courts of Jérémie, on this 25<sup>th</sup> day of January 2010 with the assistance of Lauchard Dolcé, registrar of the Investigating Office.

All bailiffs are ordered, on this request, to enforce this judgment; officers of the Public Prosecutor's Office in the civil courts are ordered to support it; all commanders and other agents of law enforcement are ordered to provide support when legally required.

In witness whereof, the official record of this order was signed by Judge Jean Gary Lundy and the registrar, Lauchard Dolcé.

So signed: Yvan Arnoux, senior member, Renel Justin, registrar

Checked;  
For certified execution copy:

[signature]  
Jean Gary Lundy, Esq.  
Investigating Judge

[signature]  
Lauchard Dolcé, Registrar

[illegible round stamp]

[handwritten:]  
No. 14 Restitution  
February 22, 2010  
Case 3758 Page 452

Excerpt from Judgment (App. Ct. Les Cayes Oct. 11, 2012) [VIL0033-35]

## TIBARI TRANSLATION

667 BROADWAY EVERETT, MA 02149

Office: 617-294-0737

Translation from French

REPUBLIC OF HAITI

"Freedom - Equality - Fraternity"

### Federal Public Prosecutor's Office at the Cayes Court of Appeal

Of the large executory order issued on Thursday, October 11, 2012 by the Court of Appeal of Les Cayes whose device is thus conceived.

"For these reasons and in accordance with the conclusions of the public prosecutor represented by Jean-Jacques Banatte Fougere, contained in his final application dated July 17, 2012, there is no need to follow against Rosemene Bajon and Wilfrid Lorena, Jean Morose Viliena, dismiss them from the links of prevention for insufficiency of guilt, let us order that they be released immediately if they are not retained for other causes; Let us also say that there is a need to follow against the men Dieune Jean Noel, Elie Jean Zamor, Bel Benissoit, Bel Lucnord, Aubourg Gilbert, France Isme, Bel Jean Louis, Tizo Desruisseau, Donel Desruisseau, Francy Aubourg, Vilerne Duclona, Vilsene Duclona, Smith Bajon, Lenord Bajon, Charles Kelleman, Mackenson Desrosier, Meritis Beaublanc, Dely Johny, Louis Charles Fleurime, Esteve Roberse, Izias Sunday, Sovereign Merez, Guerson Pierre, Mercury Jean Pierre, Ebert Saintylus, Obes Noel, Pierrot Boileau, Alexeyon Bajon, Alain Duclona, Rejean Berger, Paulo Cadet, Wilfrid Sinal, Leonel Fleuriza, Florilus Fleuriza, Hermance Dely, Souze Bajon, Merilerme Bajon, Vilerme Valice, Noel Erticia, identified as mentioned above and we return them accordingly as there are sufficient charges and evidence front of the Criminal Tribunal sitting without jury assistance to be judged in accordance with the law on the charge of the crime of fire, Punishable under article 356 of the Penal Code, which reads as follows: "Any person who has deliberately set fire to buildings, ships, boats, stores, shipyards, when they are inhabited or used for habitation, serving the dwelling which they belong or do not belong to the perpetrator of the crime will be punished by forced labor in perpetuity, we refer the men Michelet Noel and Liffes Liverts front of the Criminal Court without Jury assistance to be judged since there are sufficient charges and indices under the charge of fire and serious wounds causing the amputation of the right ear of Destone Lesbon ".

We finally refer the persons Marc-Arthur Conte and Lissage Viliena identified as above front of the Criminal Court sitting without assistance of Jury to be judges because there are sufficient charges and indices under the charge of complicity in the trigger fire punished by Articles 45 and 356 of the Penal Code as follows:

"Any person who has deliberately set fire to buildings, ships, boats, stores, shipyards, when they are inhabited or used for habitation, serving the dwelling which they belong or do not belong to the perpetrator of the crime will be punished by forced labor in perpetuity; those who have provided weapons, instruments or any other means that have served to the action knowing that they should serve will be punished with the same penalty."

We order that all the accused be taken prisoner and imprisoned in the civil prison of Jeremiah if they are not already in conformity with the provisions of Article 120 of the Code of Criminal Procedure. We further say that the fugitive accused will be tried in absentia in accordance with the provisions of articles 366 and following of the PC if they have never been taken into custody at the execution of the order of the Court of Appeal of Cayes. Then we order the communication of the file together with this order closing order to the commissioner of the government by the court of appeal of the Cayes to be done by him what the law obliges.

**End of Translation**

# TIBARI TRANSLATION

667 BROADWAY EVERETT, MA 02149

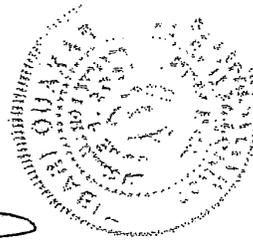
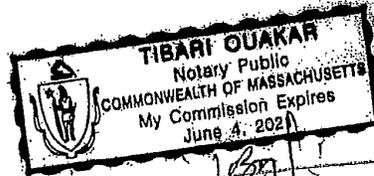
Office: 617-294-0737

I, undersigned TIBARI OUKAR, certify that I'm fluent and competent in writing and reading English, Arabic and French. I hereby certify that the present is, to the best of my ability, knowledge and belief, a true, complete and correct translation of the original document submitted to me. In witness whereof, I have hereunto set my hand and official seal.

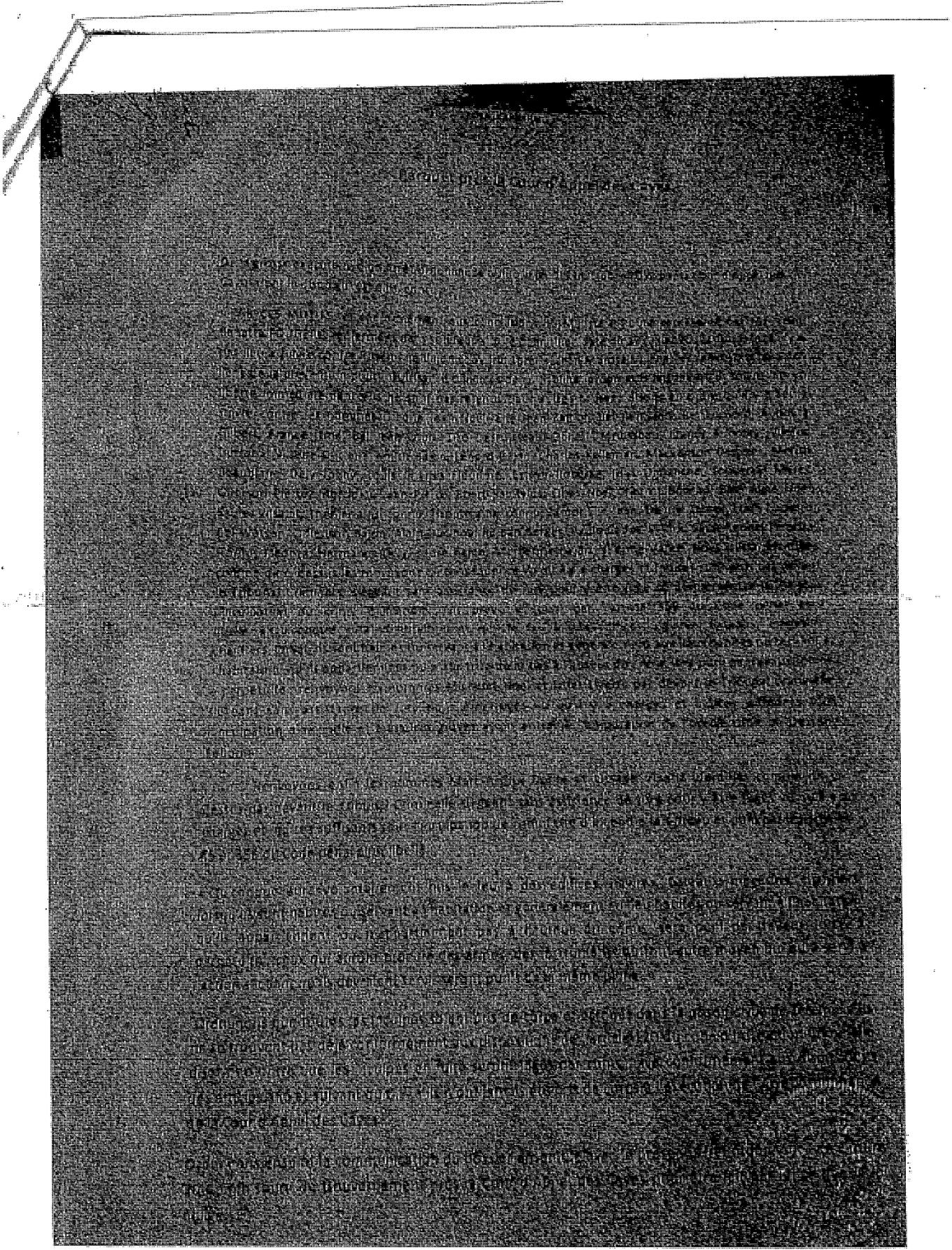
No.....

Everett, 03-27-2017

Notary Public







Excerpt from Judgment (Ct. First Instance Jérémie Feb. 14, 2011) [VIL0020-21,  
VIL0036]

21

Since, according to Michelet Noel, the fires in Les Irois occurred in response to the death of Bajon Odford, killed by diabolical means.

Since there were no grounds for prosecuting, some and others deserved to be referred to the Criminal Court for a bench trial under the law governing the matter to be tried.

**On these grounds:**

We adopt in part the indictment of the Public Ministry represented by Attorney Jean Kesner NUMA dated November 15, 2010, so as not to be totally compliant with the examination of the cause; Let us say that there is no grounds for prosecuting the indicted individuals: Venel Bel; Onel Chavane; Jean Ulyce; Bel Jean Wilbel; Louisemène Muscadin; Venitha Saint Fleur; Venord Cazimy; Danel Milfort; Berger Pierre Richard; Desta Wesly; Markès Oblin; Lobelto Edmond; Dieusseul Lamarre; Pierre Villiéna; Tirenord Derlicier; Jean Louis Bel; Erick Bel for insufficient burden of proof . On the other hand, let us say that the information gathered against the indicted individuals Lissage Villiéna, Saintus Ebert, Michel Berger, Michelet Noel Mercurieu Jean Pierre, Rosemaine Bajon, Bajon, Pierre Rousseau, Smith Bajon, Joseph Jean Bart, Bel Benissoit, Marc-Arthur Comte, Mathias Noël, Julio Victor, Ancène Varis, Jean Elie Zamor, Gilbert Aubourg, Luxenord Jean, Boileau Perrot, Lermo Bajon, Wilfrid Lorena and Michel Berger sets forth serious and concordant evidence as to their alleged participation in the fire and in the cutting off of Deston Lebon's ear. Let us hand them over to the Criminal Tribunal in session without a Jury to be tried there on charges of arson and assault causing permanent disability under articles 254, 255 and 356 of the penal code

We order that all parts of the file, including the present order, be referred to the Superintendent of the Government for all legal intents and purposes. Ce. Under articles 115, 119 and 120 of the C.I.C.

Rendered by Us, Attorney Jean Joubert MICHEL, Lawyer Judge and Examining Judge, accompanied by Pierre Chantal Colas, our Clerk, in our Chambers of the Examining Judge seated in the Court House of this city on February 14, 2011 in the 208th year of independence.

All bailiffs and every public ministry is **ordered to** execute this order; all public officers of the civil courts; all commanders and other law enforcement officials are ordered to help when and where they are legally required to do so.

In witness whereof, the details of this order are signed by the examining judge and by the clerk. -

So signed: **Attorney Jean Joubert MICHEL**, Lawyer Judge and examining judge; **Pierre Chantal COLAS**, clerk. -

Collated

BOTTOM: Certified copy. Signature at lower left of Attorney Jean Joubert Michel, Lawyer, Judge and Examining Judge. Seal in the center of the courtroom of Jérémie, Haiti. Signature at lower right of Pierre Chantal Colas, clerk.



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STATE OF: *Massachusetts*

COUNTY OF: *Suffolk*

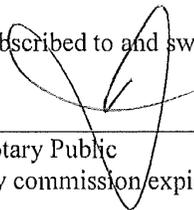
**CERTIFICATE OF ACCURACY**

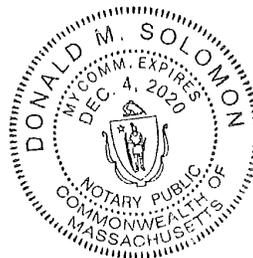
Natalia Taylor, on behalf of Language Connections, certifies:

1. That our translator(s) are proficient in both the **French** and the **English** languages.
2. That we have made the attached translation of the below mentioned original document(s) from **French** into **English** and hereby certify that the same is a true and complete translation to the best of our translator(s) knowledge, ability and belief.
3. Document name:
  - Document between Me. Jean Joubert MICHEL, Av. Juge et Juge d'Instruction & M. Pierre Chantal CO

Signature: 

Subscribed to and sworn before me this 7<sup>th</sup> day of February, 2018 by Natalia Taylor.

  
Notary Public  
My commission expires: 4 Dec 2020



21

Attendu que selon Michelet Noel, les incendies des Irois ont eu lieu en réponse à la mort de Bajon Odford tué par des manœuvres diaboliques ;

Attendu qu'il n'y a pas lieu à suivre contre certains et d'autre méritent d'être renvoyés au Tribunal Criminel jugeant sans assistance de Jury au regard de la loi régissant la matière pour y être jugés.

Par ces motifs

Adoptons en partie le réquisitoire du Ministère Public représenté par Me. Jean Kesner NUMA en date du 15 novembre 2010, pour n'être pas totalement conforme à l'instruction de la cause ; Disons qu'il n'y a pas lieu à suivre contre les inculpés Venel Bel, Onel Chavane, Jean Ulyce, Bel Jean Wilbel, Louisemène Muscadin, Venitha Saint Fleur, Venord Cazimy, Danel Milfort, Berger Pierre Richard, Desta Wesly, Markès Oblin, Lobelto Edmond, Dieusseul Lamarre, Pierre Villiéna, Tirenord Derlicier, Jean Louis Bel, Erick Bel pour insuffisance d'indices et de charges. Disons par contre que des informations recueillies contre les inculpés Lissage, Villiéna, Saintus Ebert, Michel Berger, Michelet Noel Mercidieu Jean Pierre, Rosemaine bajon, Bajon Pierre Rousseau, Smith Bajon, Joseph Jean Bart, Bel Benissoit, Marc-Arthur Comte, Mathias Noël, Julio Victor, Ancène Varis, Jean Elie Zamor, Gilbert Aubourg, Luxenord jean, Boileau Perrot, Lermo Bajon, Wilfrid Lorena et Michel Berger accusent des indices graves et concordants quant à leur participation présumée à cet incendie, et à l'amputation de l'oreille de Destone Lebon ; Les renvoyons par devant le Tribunal Criminel siégeant sans assistance de Jury pour y être jugés sous l'inculpation d'incendie et des blessures et coups volontaire ayant occasionné une infirmité permanente au regard de l'article 254, 255 et 356 du C.P.

Ordonnons que toutes les pièces du dossier y compris la présente ordonnance soient transmises au Commissaire du Gouvernement à telles fins que de droit. Ce. Au regard des articles 115, 119 et 120 du C.I.C.

Rendue de Nous, Me. Jean Joubert MICHEL, Av. Juge et Juge d'Instruction, assisté de Pierre Chantal Colas, notre Greffier, en notre Cabinet d'Instruction sis au Palais de Justice de cette ville, le quatorze février deux mille onze, l'an 208ème de l'indépendance.

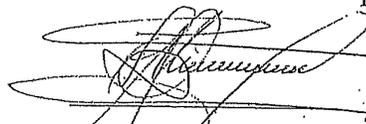
IL EST ORDONNE à tous huissiers, tout ministère public de mettre la présente ordonnance à exécution, aux Officiers publics près les Tribunaux civils d'y tenir la main, à tous commandants ou autres Agents de la force publique d'y prêter main forte, lorsqu'ils en seront légalement requis.

En foi de quoi, la minute de la présente ordonnance est signée du Juge d'Instructeur et du greffier.-

Ainsi signé : Me. Jean Joubert MICHEL, av. Juge et Juge d'instruction; Pierre Chantal COLAS, greffier.-

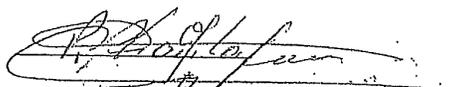
Collationnée

Pour expédition conforme :

  
Me. Jean Joubert MICHEL, Av.

Juge et Juge d'Instruction.-



  
M. Pierre Chantal COLAS.-

Greffier du Cabinet.-

Judgment (Civ. Ct. Jérémie Aug. 13, 2013) [Plaintiffs\_0000043-61]



STATE OF NEW YORK

)  
)  
)  
)

COUNTY OF NEW YORK

ss

CERTIFICATION

This is to certify that the attached translation is to the best of my knowledge and belief a true and accurate translation from French and Haitian Creole into English of the attached Plaintiffs\_0000043 dated August 12, 2013.

Edward J. Jacob  
Divergent Language Solutions, LLC

State of New York

County of New York

Subscribed to and sworn before me this 27<sup>th</sup> day of January, 2022.

by Edward J. Jacob.

  
Notary Public

MATTHEW C. ZELAK  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01ZE6350239  
Qualified in Kings County  
Commission Expires November 7, 2024



**Liberty**

**Equality**

**Fraternity**

**Republic of Haiti**

**IN THE NAME OF THE REPUBLIC**

In the year two thousand and thirteen, in the 210<sup>th</sup> year of independence, on Wednesday, August twelve, at one o'clock in the afternoon.

I, Jean Baptiste Louis Jean, Judge at the Civil Court of Jérémie [*Tribunal civil de Jérémie*], assisted by Court Clerk Jean Serge Eugène, and Court Usher Osna Jean Petit, in the presence of Mr. Rosny Saint Louis, Government Commissioner, acting on behalf of the Public Prosecutor's Office, which parties comprise the Criminal Court of this jurisdiction, hearing this case without the assistance of a jury, which was scheduled to begin on Monday, July first, two thousand and thirteen, in accordance with the law. The parties were duly gathered at the courthouse of this city, at a public hearing for the purpose of issuing a judgment in the case against:

- |                      |                    |                    |                               |
|----------------------|--------------------|--------------------|-------------------------------|
| 1) Marc-Arthur Conte | 2) Lissage Viliena | 3) Michelet Noel   | 4) Lifaite Livers             |
| 5) Saintilus Ebert   | 6) Duclona Vilerme | 7) Smith Bajon     | 8) Mercurieu Jean Pierre      |
| 9) Benissoit Bel     | 10) France Izmé    | 11) Jean Louis Bel | 12) Charles Kelleman and Co., |
- all charged with committing arson against Izmé Gaspard and Co.

The defendants were brought in from the civil prison without cuffs or chains, accompanied only by the APENA [National Penitentiary Administration] Agents, to prevent them from escaping, assisted by Messrs. Osnel Sejour, Jean Fedy Charles, and Joseph Descharles, members of the Jérémie bar.

This matter shall be decided without the assistance of a jury, per the act amending the Haitian Code of Criminal Procedure [*Code d'Instruction Criminelle (CIC)*].

**FACTS** The Presiding Judge of the Court called the criminal hearing to order and asked the defendants for their full names, ages, professions, residences and domiciles.

The first defendant stated his name to be Marc-Arthur Conte, age 46, teacher, born in Irois, and residing and domiciled therein.

The second defendant stated his name to be Lissage Viliena, age 68, farmer, born in Mandou (Fourth Section), and residing and domiciled therein.

The third defendant stated his name to be Michelet Noel, age 32, farmer, born in Irois, and residing and domiciled therein.

The fourth defendant stated his name to be Lifaite Livers, age 43, farmer, born in Irois, and residing and domiciled therein.

The fifth defendant stated his name to be Ebert Saintilus, age 50, farmer, born in Irois, and residing and domiciled therein.

The sixth defendant stated his name to be Duclona Vilerme, age 26, merchant, born in Irois, residing and domiciled in Port-au-Prince, Bicentenaire Villade de Dieu.

The seventh defendant stated his name to be Smith Bajon, age 31, electrician, born in Irois, residing and domiciled in Anse-d'Hainaut.

The eighth defendant stated his name to be Mercurieu Jean Pierre, age 63, farmer, born in Irois, and residing and domiciled therein.

[stamp:] MINISTRY OF JUSTICE  
[illegible] of JÉRÉMIE  
[illegible] BY [signature]  
DATE: 09-06-13 TIME: 1:05 P.M.  
No. [illegible]  
SIGNATURE [signature]



The ninth defendant stated his name to be Benissoit Bel, age 45, farmer, born in in Irois, and residing and domiciled therein (Third Section).

The tenth defendant stated his name to be Izmé France, age 27, student, born in Irois, and residing and domiciled therein.

The eleventh defendant stated his name to be Bel Jean Louis, age 29, farmer, born in Irois, and residing and domiciled therein (Matador, Third Section).

The twelfth defendant stated his name to be: Charles Kelemann, age 35, fisherman, born in Irois, Third Section, and residing and domiciled therein.

A man known as Mackenson, Meretus Beaublanc, Dieuné Jean Noel, Elie Jean Zamor, Bel Lucnord, Aubourg Julbert, Tijo Deruisseau, Francky Aubourg, Wilsaint Duclona, Lenord, Bajon, Dely Johny, Louis Charles Florismé, Steeve Obès, Ysias Dimanche, Souverain Merais, Pierre Guerson, Obès Noel, Pierrot Boileau, Bien-Aimé Noel, Sorel Noelsaint, a man known as Tenia, a man known as Tizout, Merlème Bajon, Alain Duclona, Rejean Berger, Paulo Cadet, Wilfrid Cenal, Lionel Fleriza, Flonillus Fleriza, all charged as fugitives.

The Presiding Judge of the court informed the counsel for the defense that it could not say anything improper or contrary to law, and that said counsel must behave with decency and moderation. The Judge likewise cautioned defendants' counsel to remain attentive to what they would hear and ordered the Court Clerk to read aloud the referral order of the investigating judge as well as the indictment.

Party claiming damages [*partie civile*]: Messrs. Mercier Josma, Yvon Janvier, Ariel Chery, Antoine Michelet Sanon, and Jean Michel obtained an instrument declaring their standing to defend their clients.

Counsel for the defense, Messrs. Joseph Descharles, Rosevelt Charles, Osnel Sejour, and Jean Fedi Charles, obtained an instrument declaring their standing to defend their clients.

Counsel for the defense requests a record showing that the names of Vilème Duclona and Izmé France do not appear in the order, which instrument was given thereto.

The Public Prosecutor argued that when saying the name Marc-Arthur Conte and Co., the others are [considered] there.

The party claiming damages fully agrees with the Public Prosecutor.

Counsel for the defense reapproached and requested and obtained an instrument.

“According to the legal commentary, it is a principle that the indictment order be the sole instrument...”

Counsel for the defense, appearing in series, fully agreed that there were two parties who had not been summoned among the defendants, and counsel thus reserves the most formal legal rights in relation thereto.

The Public Prosecutor reapproached, declaring to the court that he would not allow himself to be coerced by the counsel for the defense, and the party claiming damages agreed.

The counsel for the defense again [took the floor and] declared to the court that the indictment maintains the order closing the investigation.

Counsel for the defense does not so declare, as it did not receive the order to appear, but was instead served with the indictment, on which their names do not appear.

The Presiding Judge of the Court then read the contents of the indictment to the defendants, and told them: “This is what you have been accused of, you will now hear the charges that are being brought against you.”

Mr. Antoine Rosny St. Louis, attorney, Government Commissioner, acting on behalf of the Public Prosecutor's Office, asked for and was given the floor, and then described the matter at issue in the indictment.

He then presented the Court with the list of witnesses called to testify per his request.

The Public Prosecutor's Office, having requested and been granted the floor, asked the court to hear the witnesses' testimony regarding the fire that had been set off in Irois.

**Witnesses**

- 1) Lebon Enel (Absent)
- 2) Souverain Cenal (Present)
- 3) Evens François (Present)
- 4) Larrieux Lifranc (Present)
- 5) Milord Belgi (Absent)
- 6) Elistène Louis (Absent)
- 7) Remy Milfort (Present)
- 8) Cajus Maxo (Absent)
- 9) Resima Fednor (Present)
- 10) David Ecclésiaste (Absent)
- 11) Ms. Wiliame Lebon (Absent)
- 12) Franckel Izmé (Present)

The party claiming damages asked for and was granted the floor, and declared to the court to have not received the list of witnesses called in this case, and asked that the Public Prosecutor's Office be ordered to provide it with the list of those witnesses here today.

The party claiming damages objected to the witnesses.

The Public Prosecutor's Office argued against said party's statement, and likewise invoked Article 249 of the Haitian Code of Criminal Procedure.

Counsel for the defense had no objection against the list of witnesses served by the Public Prosecutor's Office.

**Witnesses**

The first witness, after taking the oath to speak without hatred or fear, and to tell the whole truth and nothing but the truth, was asked to state his full name, age, profession, residence and domicile, whether he knew the defendants before the event noted in the indictment, and whether he was related to, connected with, or worked as a domestic or servant of the parties. The witness stated his name to be:

Souverain Cenal, age 43, farmer, born in Irois and residing and domiciled therein. I am neither a domestic nor servant of the parties.

The party claiming damages asked for and was granted the floor, and declared to the court that the hearing of this witness should be waived, due to his involvement in this matter.

The Public Prosecutor's Office had no objections.

Counsel for the defense took the floor and stated that the correct term should be "recused" rather than "waived."

The party claiming damages expressed the most formal legal reservations about hearing this witness.

The court upheld the public prosecutor's request by hearing this witness and proceeding with this matter.

In essence, he testified as follows: Judge: I came here to give some information, it was something that happened in the evening, we had someone who was sick, Mr. Marc-Arthur Conte went to buy a medication; when he returned he was making sound, I stayed next to him.

I got up and noticed that the Police was arresting people, I don't know anything, they are good people, I have never heard the name of these defendants linked with burning houses, Marc-Arthur Conte was sitting at a table making sound.

1) Do you know Marc-Arthur Leillant in Irois? Yes

Did they prohibit the sale of gas in Irois? A- They did not prohibit the sale of gas.

This witness gave oral testimony and answered all of the questions he was asked. After testifying, the judge asked the witness if it was the defendants present that he heard speaking, and asked the defendants if they wished to respond to what was stated against them, and the testimony was then discussed.

The second witness, after taking the oath to speak without hate or fear, and to tell the whole truth and nothing but the truth, was asked to state his full name, age, profession, residence and domicile, whether he knew the defendants before the event noted in the indictment, and whether he was related to, connected with, or worked as a domestic or servant for the parties. The witness stated his name to be:

François Evens, age 38, engineer, born in Anse-d'Hainault, residing and domiciled in Irois. "I am neither a domestic nor servant of any of the parties."

The party claiming damages asked the court to provide the witness with his summons, along with requesting a piece of identification, which was then done.

The party claiming damages expressed the most formal legal reservations about the hearing of this witness.

In essence, he testified as follows: Judge: I can talk about Lissage Viliéna and Marc-Arthur Conte, lissage wasn't there on that day and Marc-Arthur went to buy a medication in Anse d'Hainault, we are the ones who call to ask him to come back and we came back he was making sound. I can't tell who did it, I don't know if Vileme Duclona was in Irois, I know him I don't know that Marc-Arthur Conte sold gas, I didn't hear that Marc-Arthur Conte burned down houses with gas, I have known Marc-Arthur Conte for 8 years, since they blamed him for it, but I don't know that he can do that.

This witness gave oral testimony and answered all of the questions he was asked. After testifying, the judge asked the witness if it was the defendants present that he heard speaking, and asked the defendants whether they wished to respond to what was stated against them, and the testimony was then discussed.

The third witness, after taking the oath to speak without hate or fear, and to tell the whole truth and nothing but the truth, was asked for his full name, age, profession, residence and domicile, whether he knew the defendants before the event noted in the indictment, and whether he was related to, connected with, or worked as a domestic or servant for the parties. The witness stated his name to be:

Vilfranc Larrieux, age 38, team leader, born in Irois and residing and domiciled therein. "I am neither a domestic nor servant for any of the parties."

He essentially testified as follows: Judge: Odford Bajon, he is originally from Irois, he was sick; Supporters of Odföd Bajon took to the streets, they said if Odfort Bajon dies they will turn the city into ashes:

Which instrument was granted to the counsel for the defense because this witness is a victim.

Marc-Arthur is the # 1 actor in the file . I told you there are 34 cases that happened in Irois, their actions show that they are not good people, it was the death of Odfort Bajon that triggered this action. Izyas and Wilfrid are soldiers, the state funded a part of the funds to repair some houses, my house didn't burn, some houses in Kayiman were burned down, they did it by the same token.

The party claiming damages asked the witness through the court about how France Izmé turned himself in and Villème Duclona was arrested in Port-au-Prince.

A- Franz Imé stated that his life was threatened, he turned himself to the Police.

***The counsel for the defense asked the witness through the court:***

- Was he/she involved in politics?
- Yes, development politics.
- Where was he/she at the time?
- I was in Irois
- Does marc-Arthur sell gas?
- No
- Did he/she see Marc-Arthur burn houses in Irois?
- Yes
- In what political party was Odford Bajan in?
- I don't know, except that I would have KEP.
- Under which party Odford Bajan was elected?
- I don't know
- Are you in a political party?
- No
- What did you see Marc-Arthur Conte use to set the fire?
- With a gallon of gasoline
- How was he dressed on that day?
- I don't know.

Granted on the record.

Due to the fact that the witness declared to not know what color clothing he was wearing, but since he saw that Marc-Arthur had a gallon of gasoline.

It was a group of people who were together burning the houses.

- Did he/she see Vilerme Duclona setting the fires? Yes with gas and hay
- Did he/she take pictures? I'm not a journalist
- Is Marc-Arthur Conte a candidate? I don't know.
- Are you a candidate? No
- The problem I have with them is because they want to destroy Irois.
- Were you threatened? No
- Were there other people who went to hide with you? No
- Do you know all those defendants? Yes
- The houses started burning from 7 PM to x.
- Was he/she in Matadò, was he/she in Irois also? No
- How come he/she said those guys are the ones who burned the houses down? From other witnesses and victims.

Granted to the counsel for the defense, due to the fact that the witness said he did not see, but according to the statements of the witness and victims.

- What role did each one of these people play in setting off the fire from Matadò to Irois? They are a group.
- Where was he/she? I was in Irois
- Marc-Arthur was the one sponsoring the group.
- How did you see all those things? From where I was taking cover.

This witness provided oral testimony and answered all of the questions he was asked. After testifying, the judge asked the witness if it was the defendants present that he heard speaking, and asked the defendants if they wished to respond to what was said against them, and the testimony was then discussed.

***Mercidieu Jean Pierre: Answered***

- Did you see me? Yes
- Where were you? Matadò – Irois?
- You set fire at Raymond Jean Noel's house

***Michelet Noel answered***

The witness has problem with us because of the political party

- Your Honor, Michelet cut [sic] the ears of Destone Lebon. He took me to Tibiron

***Izmé France:*** Mister Vilfranc has problems with me because of the political party, I turned myself in because everyone at home wants me to be in the same political party that they are.

***Duclona Vilème:*** I was arrested in Port-au-Prince, who and with what warrant? I don't know, I wasn't there.

***Marc-Arthur Conte:*** I am not in in the same political party with Larrieux, I do not sell gas.

- How many gallons of gas did you see me with? From Matador to Irois.

The fourth witness, after having taken the oath to speak without hate or fear, and to tell the whole truth and nothing but the truth, was asked to state his full name, age, profession, residence and domicile, whether he knew the defendants before the event noted in the indictment, and whether he was related to, connected with, or worked as a domestic or servant for the parties. The witness stated his name to be:

Milfort Remy, age 41, fisherman, born in Irois, residing and domiciled therein. "I am neither a domestic nor servant for any of the parties."

The party claiming damages asked the court to order this witness to present his summons and national identification card.

The party claiming damages expressed the most formal legal reservations about his being heard.

In essence, he testified as follows: Judge: Marc-Arthur Conte went to Anse D'Hainault to buy a medication, when the person died, we called Marc-Arthur came back, when he came back he was making sound.

Public Prosecutor's Office:

- What did they use to burn down those houses? I don't know, didn't I tell you that these people are nice people. I don't live at the same place where they live.

Counsel for the Defense: Where was Marc-Arthur Conte? At the wake

- Did he have a gallon of gasoline in his hand burning houses in Irois? No
- Marc-Arthur was a candidate, does he still have supporters in Irois? Yes
- Have you ever heard that Marc-Arthur burns down houses in Irois? No
- Marc-Arthur was a candidate, he always had supporters in Irois, he was a candidate everyone was in their own party; he was implicated because Odfort is his brother-in-law.

Matador – Irois 9 minutes; taxi 15.25 Gourdes.

- Was Larrieux able to see the house they were burning? He can see some houses
- Was Larrieux able to identify one person setting up the fire from where he was? If it is daytime, he can see; at night, no
- Were there any houses made of concrete that burned down? Yes, they were not stuck together
- It is not the first time that they set fire in Irois.
- Did those houses burn down for real? Yes
- Did one of these people commit the act? I don't know.

This witness gave oral testimony and answered all of the questions he was asked. After his testimony, the judge asked the witness whether it was the defendants present that he heard speaking, and

asked the defendants whether they wished to respond to what was stated against them, and the testimony was then discussed.

The fifth witness, after taking the oath to speak without hate or fear, and to tell the whole truth and nothing but the truth, was asked to state his full name, age, profession, residence and domicile, whether he knew the defendants before the event stated in the indictment, and whether he was related to, connected with, or worked as a domestic or servant for the parties. The witness stated his name to be:

Resuma Fedner, age 27, mason, born in Irois, residing and domiciled therein (popiggi). He is the son of one of the plaintiffs.

In essence he testified as follows:

Judge: Wednesday, October 28, 2009, these guys took to the streets They went to the house of a guy named Senèk.

Marc-Arthur Conte, Lifèt Livè, Aubourg Francky, Gilbert et Co.

October 29, 10 a.m.: the same ones went by the market place they asked everyone to leave the market place, many left some stayed.

***Party requesting damages***

- Building a house is expensive? Yes;
- Are the houses of these defendants burned down? No
- Did they burn houses that belong to them? No
- Marc-Arthur was the head of it.

***Counsel for the defense questioned the witness through the court***

- Where were you? I was at Lòsa's house near the house where he/she was setting on fire. I saw Marc-Arthur with a gallon of gas in hand. Marc-Arthur took the gas from a guy named Milot.
- Did you see Marc-Arthur set fire in Matadò up to Irois? Irois I didn't see all of them but he went after Anse D'Hainault
- I saw Marc-Arthur with my own eyes when he was setting the fire.
- Did you see Duclona Vilème setting the fire? He is the worse thug after Marc-Arthur Conte, he burned down his uncle's house.

This witness gave oral testimony and answered all of the questions he was asked. After the testimony, the judge asked the witness if it was the defendants he heard speaking, and asked the defendants whether they wished to respond to what was said against them, and the testimony was then discussed.

***Duclona Vilème Answer***

Ask him, for me, why did he file a complaint against me in 2012? I did not submit a complaint against him. As the person he saw who was burning his father's house.

***Izmé France:***

Ask him, for me, why did he file a complaint against me in 2012? I did not submit a complaint against him. As the person he saw who was burning his father's house.

The sixth witness, after taking the oath to speak without hate or fear, and to tell the whole truth and nothing but the truth, was asked to state his full name, age, profession, residence and domicile, whether he knew the defendants before the event noted in the indictment, and whether he was related to, connected with, or worked as a domestic or servant for the parties. The witness stated his name to be:

Izmé Franckel, age 42, farmer, born in Irois, residing and domiciled therein.  
I do not work as a domestic or servant for any of the parties.

The counsel for the defense asked the court to order the witness to present his summons and identification card, which the witness then did.

The Public Prosecutor asked to apply Article 256 of the Haitian Code of Criminal Procedure [against] witness Franckel Izmé.

The party claiming damages asked the court to hear the witness for informational purposes.

Counsel for the defense objected to the hearing of witness Franckel Izmé.

The party claiming damages declared to the court that the law does not oppose hearing the cousin of a defendant.

Counsel for the defense repeated its request.

The Public Prosecutor's Office is the main prosecuting party in the proceeding; Article 256 of the Haitian Code of Criminal Procedure, order of April 23, 1989.

The party claiming damages declared to have no connection thereto.

Counsel for the defense took the floor and stated it was uncertain, such uncertainty benefits the defendants.

Court: the text does not specify; the witness will be heard.

Essentially, he stated as follows: Judge: On Tuesday the 27th, I went to Okay [Les Cayes] (because I have my child/children at school in Okay [Les Cayes]; I got on a [boat] with Michelet he did not collect anything from me, upon my return, I was told Odfort is sick, he had to be carried, Michelet carried him, I said well Michelet didn't tell me that?

Odfort passed away, everyone at the market place said to pick up everything, because they said they were going to burn them down into ashes. I have a buddy of mine who called to tell me they set his house on fire, he mentioned the names of all those involved in the burning of his house, while I was taking shelter somewhere, I heard a group saying : let us burn down Destone's house, after that I climbed up a mango "labiche" tree I saw them burning, After that I climbed down and went to hide in a bush made of plantain trees, I saw Franky calling Gilbert who said there is no more gas and then he said he has to go get it at Marc-Arthur's house. Vilème came with a gallon of gas, they went to set fire at Senta's house.

***Public Prosecutor's Office***

At around 7:30 PM, did those houses start burning down? I was hiding; the police was not able to.

***The party claiming damages questioned the witness through the court.***

Who participated in setting the fire? I can't say who participated in setting the fire.

***Counsel for the defense questioned the witness through the court.***

- Are there other defendants that he/she didn't mention, did they participate? Other people may have seen them.
- I've never had any issues with anyone of them.
- Are you in the same political party as those defendants? No
- Do you have any issues with Izmé? No
- People cannot make others sick, God can, Yes Marc-Arthur is involved in politics.
- Fusion candidate in 2000, afterwards he represented Preval.
- The havoc that is currently happening, it is done on the moderate ones.
- His brother-in-law who had passed was not in the same political party as he (Marc-Arthur) was

This witness gave oral testimony and answered all of the questions he was asked. After his testimony, the judge asked the witness if it was the defendants present that he heard speaking, and asked the defendants whether they wished to respond to what was stated against them, and the testimony was then discussed.

**Hearing of the plaintiffs**

The first plaintiff responded, stating his name to be: Destoine Lebon, age 68, farmer, born in Irois, and residing and domiciled therein.

He essentially declared as follows: Judge: I am a victim, a group of people came to my house, they took me, beat me, Lifaite Livers was there, France, Vilème even cut my ear, they took me to “ti meriken’s house” who is a “ougan” [Voodoo priest], viliena, when I arrived at “Ti Meriken’s house,” I saw Marc-Arthur they asked me what do I know about Odfort’s illness? Shortly after they beat me up. I told them I don’t know anything about Odfort’s illness, I told them, they can do whatever they want with me. Ti Meriken came out from where he was, he pulled the rope and he said what are you doing to Destone? He made them release me after that Lifèt slapped me several times, they tied up Tochon also, I could not run, they took me they went back with me again to kill me; Ti Meriken said go kill him on the square. (irony). Ti Lifèt told Michel you go with him, we must be able to find him when we need him. They took me to the hospital they came after me at the hospital. Afterwards, I fled to Anse d’Hainault at around 6 o’clock.

***Public Prosecutor’s Office***

Ansèn is the one who came and tied me at my house, Mercidieu is the only who wasn’t throwing blows, as far as setting fires, I don’t know, they are all my friends, I have played with Lifaite; for the blows that I got, they burned the house down in my absence.

I have 2 houses in constructions, they are not completed yet.

***Party requesting damages***

- What’s the link between the burnt houses the blows you’ve received? Michelet cut my ear he swallowed it

The second plaintiff responded, stating his name to be: Nissage Martyr, age 53, merchant, born in Irois, and residing and domiciled therein.

Judge: I never need to speak, because Haiti is where criminals are kept.

These people from Matadò were passing by they told me if Odfort is dead, we’ll chop heads and burn down houses. Bajon Odfort passed away on October 29, 2009, those guys I just mentioned, I saw them coming, I saw them tying up Destone, Tòchon. I said since I saw these guys passing in front of the police station, that is when I will know if these guys will live. Afterwards, I saw Destone enter the hospital, the nurses were very scared. Lissage was leading the group, at around 6 PM, I was at home. Lifèt called me and said there are 4 houses that burned down already. I told my wife go find a place to sleep. Afterwards I hid in a vetiver bush, I saw all the houses burning down. After they yelled Marc-Arthur I have half gallon of gas remaining. Michelet, Lifèt, Lissage, when they called Marc-Arthur I said my house is burning down because he is my compadre, when they finished burning my house, that is when they burned the house of M. Senès.

***Public Prosecutor’s Office***

April 8, Vilème Duclona injured me with a 12; 14 houses burned down in 2007, they are the ones who burned them. All these guys are Bajon’s followers, Marc-Arthur is the main perpetrator, Ti Meriken fled.

Vilème and Lissage said I cut his foot I am going to finish him/her.

At around 9 -10 PM, those guys burned down my house. I have only one house that burned down.

The third plaintiff responded, stating his name to be: Ismé Judès, age 26, fisherman, born in Irois, and residing and domiciled therein.



He essentially declared as follows: Judge: On October 27, 2009, I was seating at home by the street, I noticed a lot of guys passing by saying if Odford dies, we will burn down houses, chop off heads, Marc-Arthur was leading them.

Counsel for the defense requested and obtained the floor, and declared to the court that:

Ismé Judès is not a victim in this matter, he has been a victim since 2008, this matter does not concern him. The plaintiff should be dismissed, purely and simply.

**The Public Prosecutor's Office** declared that even if it he was not the victim, if he was present the court could hear him for informational purposes.

*The party claiming damages* asked the court to hear him because he is a plaintiff.

*Counsel for the defense:* Objects to this.

*The Public Prosecutor* declared to the court that all legal arguments may be deemed sufficient.

Counsel for the defense repeated its question, as this plaintiff did not hear it.

The fourth plaintiff responded, stating his name to be: François Prenel, age 47, cabinetmaker, born in Irois, and residing and domiciled therein.

Judge: On October 27, 2009, Odford arrived in Kayiman.

Counsel for the defense asked the court to order the plaintiff to produce a copy of the summons. The name of this plaintiff does not appear in the order.

The Public Prosecutor's Office declared to the Court that a consensus had been reached to hear 8 of the 40 plaintiffs.

This fourth plaintiff was not heard.

The fifth plaintiff responded, stating her name to be: Ms. Julia Dorval Souverain, age 46, merchant, born in Irois, and residing and domiciled therein.

She essentially declared as follows: Judge: On October 28, 2009, they called with a private No, they told me if you're at the market place, leave the market place and come because Odford Bajon is sick, if he dies they will chop heads and burn down houses. But Eric Bell told me my house will not be burned down. Someone else called me and asked if I was at my house to leave the house. Afterwards I went to hide in a school, I saw all the people who were setting up the fire: Lissaj V.Francky, Gilbert, Benissoit, Boileau; Jean-Louis, Marc Arthur.

France Izmé called Marc-Arthur there's no gas. March-Arthur brought the gas with his own hands.

**Public Prosecutor's Office.**

I have 3 houses the house in Dalbeton is the one that burned down., I had no problem with these people. My house burned down at 8 o'clock. Marc-Arthur is the sponsor, he had a gallon of gas in his hand. I didn't see Mercurieu-Hebert-Vilème- Michelet: I don't know why they burned our houses, they are the ones who have to say what issue they have with us.

The sixth plaintiff responded, stating his name to be: Boniface David, age 32, teacher, born in Irois, and residing and domiciled therein.

He essentially declared as follows: Judge: Odford Bajon used to be my teacher he got sick, he left the town to go to Port-au-Prince. His supporters said if he dies they chop heads, burn down houses. On October 27, 2009, Odford came to town, but I stayed away, because they had come to murder me before, they murdered my brother instead of me.

Lissage-Marc-Arthur-Vilème-Michelet at 9:30 PM they set my house on fire.

***Public Prosecutor's Office***

I had no issues with them at all, 36 houses were burned down in Irois. Ti Meriken is the commander in chief of the army. The assistants are Viliena and Marc-Arthur Conte. Marc-Artur had one gallon of gas in his hands.

***The seventh plaintiff responded, stating his name to be:*** Vilsaint André Marc, age 39, IT professional, born in Irois, and residing and domiciled therein.

He essentially declared as follows:

Judge: At around 3:00 PM, I was standing at my house, I was on my way to go to a meeting, that is when I saw a group of people coming with two people who were tied up, they were Destone and Torchon.

Lifaite- Michelet- Francky-Benissoit-Aubourg, France slapped me, after France hit me with a rock, blood busted out of my face, after that I ran to hide in a bush made of bamboo trees, 9,10 o'clock I heard a group coming Bajon is dead chops heads, burn houses down, at that time there were at that time there were some who said burn down, others said don't burn down, As the houses were burning, a friend of mine went to drop us off in Tibiwon in a Fly Boat.

I didn't see.-

Marc-Arthur Conte, Mercurieu, Kelleman.

***The eighth plaintiff responded, stating his name to be:*** Antoine Kesnel, age 53, teacher, born in Irois, and residing and domiciled therein.

He essentially declared as follows:

Judge: Odfort Bajon is sick, he went back to his house, I didn't understand how come his supporters said, if he dies it will be chopping heads, burn down houses. Thursday October 29, 2009, I was hiding, but no one could come nearby their area.

They destroyed, they damaged, Marc-Arthur's wife/woman made a statement she said they burned down the child's house so that they would not burn the house of the father. They were out of gas. Marc-Arthur brought more gas so that they could burn the house down. Among the 12, Mercurieu is the only one I didn't see. All of them are originally from Irois. They burned down 36 houses. It was general Francky Aubourg, Lissage Viliena, Marc Arthur, Walton, Smith and Co, I have no link with Ti Meriken.

*At 10:30 p.m., the hearing was adjourned to tomorrow morning, 10:00 a.m.*

**Hearing resumes**

***The first plaintiff responded, stating his name to be:*** Marc-Arthur Conte, age 46, teacher, born in Irois, and residing and domiciled therein.

In essence, the testimony was as follows:

Judge: I was born in the municipality, every one turns to me, in 2000, I had political aspiration, I was in "ESKANP", but I lost to the Lavalas. Odfort is the one who said I have refugee's money in my hands. Fellow Andre Marc said, I am the only one he didn't see, Glory be to God we are compadres. Odfort was against me, he is the reason why I lost the elections, he was in "MODERE", I myself I was organizing the elections for Maxime Roumer . FAES gave me a certificate to manage the water problem in the area in that area. Now the population is suffering because of water. I am inside the church, all the priests appreciate me . The population wrongly blames me for this action. On October 28 my wife (woman) called me Mako, Odfort is very sick, should I call the Cubans to give him a last treatment, I picked up Ernest Oxil, he went to the Cubans with me, they

told me they are going to give First care to Odfort for me. That is how they prescribed a medication, I am the one who went to get the medication in Anse d'Hainault, afterwards I went to buy another medication . Upon my return, they called me on the phone to let me know Odfort passed away. When I got there, I saw everyone was crying, I told my wife to be consoled, a sister of my wife called me from the United States to put him in a morgue, his wife did not accept, she said she's going to bury her husband at that moment, I took my devices, I was providing sound during the entire night of the wake. On the next day I went to look for Keloke so that he could come and get some money to make some wreaths for me and Douby came to take some pictures for me, that is when I received a phone call from Andre Marc who told me to leave the town immediately because they are on their way to arrest me, because I am selling gas, but there are Marc-Arthur Conte and Marc-Athur Leillant. That's when I saw a UDMO vehicle come to arrest me for selling gas and I spent three days at the Dame-Marie Police Station, during the police interrogation, I said that I called Marc-Arthur Leillant because he is the one who sells gasoline. Because of that, he called the police chief Arisidas to give him an update. The police chief said to write my name as he knows it is spelled. I transferred here, I've been here ever since, I don't have an attitude to burn down houses.

***Public Prosecutor's Office***

- Where were you, when the event was happening in Irois? I was at my brother-in-law's wake.
- At around what time did the fire start? I don't know I was not there.
- When did you hear about the fire? I don't know at what time
- At what time did the fire end? If you ask me about the wake yes, the fire no.
- Why did they tell you to run away? That is because they said they were coming to arrest me
- Since when were you arrested? Since November 1st, 2009.
- Who did you hear is responsible for committing this action? I don't know.
- What issue do you have with these people? Political issues only

***Counsel for the defense questioned the defendant through the court.***

- When did you learn that the house in Irois burned down? When I was on my way
- When did you leave the location where the person passed away? at 6 o'clock
- I went back to Irois at 6:30
- Were you happy that those houses burned down? No
- Did you know the houses were going to be burned down? No
- Are you a good person? Yes
- The people who submitted a complaint against you, what issue do they have with you? Because of politics only

***The second defendant responded, stating his name to be:*** Lissage Viliena, age 68, farmer, born in Anse-d'Hainault (Mandou, Fourth Section), residing in Irois.

In essence, the testimony was as follows:

Judge: When the houses burned down in Irois I wasn't there, I already had 15 days since I was out, when I came down on Monday, I noticed the police came to arrest me because of the burnt houses.

***Public Prosecutor's Office***

- How come your name had been mentioned in this action? Your Honor, my child is a judge in town, I would have never gotten involved in something like that. I was out of town, a place called "wòch blanch (white stone)."

***The third defendant responded, stating his name to be:*** Michelet Noel Conte, age 32, farmer, fisherman, born in Irois (Divino, Third Section), and residing and domiciled therein.

In essence, the testimony was as follows:

Judge: On January 29, 2010, the police with a group of thugs came to arrest me for something that I don't know the OPL supporters are the ones accusing me in this record,

***Public Prosecutor's Office***

- On the day of the fire, I was in Tiburon
- I don't know at what time the fire started, nor when it ended, when I returned to my house to the house of the voodoo priest directly, on the next day I saw the issue of the fire.

**The fourth defendant responded, stating his name to be:** Lifate Livers, age 43, farmer, born in Irois (Third Section), and residing and domiciled therein.

In essence, the testimony was as follows:

Judge: I am one of the OPL, I was with Mayor William, and all of us had a job in the section of Galèt Potonye ,he is the strongest, so I was not with the guys, when I was in Galèt Potonye, I was told that the mayor passed away, but yet it was Ofort, I didn't even know if he was there, I used to work against him. An then they told the KAZEK that he must arrest me no matter what.

**Public Prosecutor's Office**

I was arrested on March 6, 2010, I was arrested at Galèt Potonye (Tabas) ; I don't know anything about that because I live in Galèt Potonye.

**The fifth defendant responded, stating his name to be:** Ebert Saintilus, age 50, farmer, born in Irois, and residing and domiciled therein.

In essence, the testimony was as follows:

Judge: I can't say anything about the fire, I am not involved in politics, Odford was not related to me on November 5, 2009, they came to arrest me to this date.

**The sixth defendant responded, stating his name to be:** Vilème Duclona, age 26, merchant, born in Irois (Cité Laroc), residing and domiciled in Port-au-Prince, Bicentenaire Village de Dieu.

In essence, the testimony was as follows:

Judge: I don't know anything about the fire, I live in Port-au-Prince, but there's a political question, I left Irois on June 11, 2009 to go to Port-au-Prince, I am a vendor, on November 14, 2010 after I was done selling, I got in a public vehicle and there was an argument between myself and the other people a fight broke out the driver stopped the vehicle, he turned us to the Police and after 14 days I was transferred here for the fire dossier which I don't know.

**Public Prosecutor's Office**

- I learned about the fire on the radio because I was in Port-au-Prince, I didn't know what role Marc-Arthur plaid in the fire issue.

**Counsel for the Defense questioned the defendant through the court.**

- Are you involved in politics? Yes
- What did you do in Irois? I am in school
- Where were you on October 29? Port-au-Prince
- What were you doing on October 29? I was selling sandals
- When you were arrested, what did they say that you did? nothing
- Did you know that the fire was going to happen? No
- Did you take part in the burning down of houses? No

**The seventh defendant responded, stating his name to be:** Smith Bajon, age 31, electrician, born in Irois, residing in Anse-d'Hainault

In essence, the testimony was as follows:

Judge: I don't know anything about the fire, I live in Anz Deno

***Public Prosecutor's Office***

I was arrested on February 4, 2010 by the Police

***The eighth defendant responded, stating his name to be:*** Mercidieu Jean Pierre, age 64, farmer, born in Irois, and residing and domiciled therein.

In essence, the testimony was as follows:

Judge: There are two people in the OPL party who said that I was involved in the fire, Your Honor I don't know anything in that fire issue, the house of Mister Raymond is leaking he doesn't invite you ,I spent the day on his job, and I don't know anything at all about that event . I had come back from the market place, I heard Doudou, Tirenord were arrested, on the road I came across UDMO who got me ever since that time I have been here. I have almost four years in jail.

**Counsel for the defense questioned the defendant through the court.**

- Before I was jailed I was in OPL only again.
- When Destone was tied up, where were you? He didn't see you
- Where were you when the fire was sat in Irois? On that day I didn't even sleep at my house, I sneaked out.
- Does it hurt you? Yes Your Honor
- Did the OPL supporters came to visit you in jail? No
- Do you have a link with the MODERE members? We say hello on the street
- Why were you put among the people who burned the houses? I don't know why; I have never had any issues with anyone of them

***The ninth defendant responded, stating his name to be:*** Bell Benissoit Conte, age 45, farmer, born in Irois (Third Section, Matador), and residing and domiciled therein.

In essence, the testimony was as follows:

Judge: On that day I spend the night in bed with my wife who was in labor, on the next day I heard about the fire, I don't know anything about the fire issue. On that day, my wife gave birth at 4 o'clock in the morning.

***Public Prosecutor's Office***

- Defendant what was your participation in the action? Your Honor I was in my bed at home

***The tenth defendant responded, stating his name to be:*** Ysmé France, age 27, student, born in Irois, and residing and domiciled therein.

In essence, the testimony was as follows:

Judge: I don't know anything about this dossier

***Public Prosecutor's Office***

- What was your participation in the fire issue? Your Honor I don't know anything about the fire issue
- What reason brought you to turn yourself to the judicial authority? Your Honor, there is a body behind, if you are not with them you are against them, that is the reason.

***Counsel for the Defense***

Your Honor ask him for us if he is in a political party? Yes Your Honor modere

- The political party in which you are, have you denounced those actions? Yes

***The eleventh defendant responded, stating his name to be:*** Bell Jean Louis, age 29, farmer, born in Irois (Third Section, Matador), and residing and domiciled therein.

In essence, the testimony was as follows:

Judge: As I was outside, I heard that a Mayor is dead ,I know it was Morose Viliena, I don't know anything about fire issues, I went to look for the mayor to assess the situation, and then he arrested me. He said I am a Montose supporter, he must arrest me.

***Public Prosecutor's Office***

- Your Honor I went to Ma rouj on October 28 ,I came back on October 29, I didn't hear anyone talking about what happened in Irois.

***The twelfth defendant responded, stating his name to be:*** Kelleman Charles, age 35, fisherman, born in Irois (Third Section, Divino), and residing and domiciled therein.

In essence, the testimony was as follows:

Judge: In 2009, Gaspard had me arrested with the brigade corps, I don't know anything about the fire issue, I have been in jail for almost 4 years ,a judge never heard me.

***Public Prosecutor's Office***

I was arrested on December 23, 2009, they sent me here since then the judge has never heard [from] me.

***The Counsel for the Defense questioned the defendant through the court.***

- What issue do you have with the people who had you arrested? I don't have any issues with them, it is political issues.
- Did you set Irois houses in fire? No

The court asked to adjourn the hearing, as all of the parties had been heard. The presiding judge declared the individual arguments to have been concluded, now moving on to the general arguments.

***The Public Prosecutor's Office takes the floor***

**Mr. Aujour Jean Luc** is the first to take the floor. He declared the grounds he intends to use, justice being the founding law. These 12 defendants, who we have heard here today, have been charged with the crime of arson. The court will issue a decision on the arson charge. The plaintiffs and witnesses have stated contradictory information; they are complicating the situation. We must get such a situation under control. The fire has caused significant harm to the Irois community. Art 22 of the Haitian Constitution states: all people have the right to lodging. Art. 1, Human Rights, discusses fraternity. We live in an era where the Rule of Law prevails. You must look to your conscience, in light of this barbarous act.

**Mr. Antoine Rosny Saint Louis** The Public Prosecutor's Office asked the court to compel the republic, rendering an equitable decision. This proceeding, to which we have been bound, has never uncovered what is essential. Justice does not live off of scandal, it dies (Etzer-Vilaire). The night of October 29-30, 2009, a fire was set off in the houses of the Irois area for political reasons. We [must] punish such conduct. The court shall be responsible for upholding the word of the law.

***Essential elements constituting the offense (4)***

- 1- The act itself/material → a piece of property belonging to another party.
- 2- Means → due to there being an explosive substance → gasoline.
- 3- Criminal intent/will, according to the legal commentary, a fire is considered...
- 4- Legal element of the offense (No punishment without law).

→ Law and justice are two elements which consolidate matters. There are harmless witnesses, I understand the declaration of the victims and those of the defendants, two of our witnesses were not here: Mercurieu Jean Pierre and Vilème Duclona.

The Public Prosecutor's Office waives the charge against Mercurieu Jean Pierre and Vilème Duclona. They have already spent four years in prison, will they benefit from mitigating circumstances? It is up to the court; it was asked to apply Article 356 of the Criminal Code [C.P.] against the defendants. For those who are fugitives, the Public Prosecutor's Office asked the court to judge them in absentia.

#### PARTY REQUESTING DAMAGES

**Mr. Ariel Chery** was the first to take the floor. Thirty-six homes were set on fire, the work of twelve arsonists. It was with good reason that the Public Prosecutor's Office asked to apply this article.

**Mr. Antoine Michelet Sanon**: We are victims, our homes have completely burned down, we are scattered about. How do you want to assign punishment? Happily the lawmaker planned everything out very well, we have heard a whole host of witnesses. You will be able to render an equitable decision in this case.

**Mr. Jean Michel**: formulated his grounds, stating that Irois is a lawless zone like Cité Soleil used to be, Judge you should decide, according to your conviction, in favor of the victims.

**Mr. Yvon Janvier**: If good men have enough courage to face....the world is lost.

Odfort's death was a pretext for the defendants to devise this situation. It is a human rights violation; Art. 276-2 rightly states (Haitian Constitution).

**Mr. Mercier Josma**: formulated his grounds, declaring that no one acknowledges their participation in this fire. Mercurieu was denounced for having burned Jean Renold Noel's house. A request was made for the joint and several payment of 800,000 gourdes for each home made of sheet metal, 1,500,000 gourdes for each house in concrete, and 2,000,000 gourdes for damages.

#### COUNSEL FOR THE DEFENSE TAKES THE FLOOR

**Mr. Osnel Sejour** was the first to take the floor, emphatically declaring that he has been tracking the event. Political changes in power are fully prescribed by our Constitution; in the year 2009, there was no regrettable fire. We issued a batch of 200 warrants, 150 people fled (those who believed they were at fault) but the defendants here would not have thought to do anything to anyone, and they felt comfortable remaining in their homes.

Three witnesses among them said that Marc-Arthur Conte was playing music that night. According to what the Public Prosecutor's Office heard, since there are upstanding people among them, the men are no longer here due to politics. "Even if I am a man, I do not live as a human." (Theran).

Until now, Marc-Arthur was strong in Irois. I took care to ask a witness if there was not another Marc-Arthur over there, and he answered with the statement that it is uncertain; is there some mitigating circumstance about this?

**Mr. Jean Fedv Charles**: The Prosecutor's Office declared that politics kills law, it is true that today you find yourself before a complex situation, first that there was a fire in Irois, be it divine, awful, scornful. Art. 52-1 of the Constitution shows how...the goal of the punishment is to rehabilitate parties at fault, accidentally, this event occurred, in your decision, you could allow these defendants to go back to their families, because they do have families.

**Mr. Roosevelt Charles:** There is a sociopolitical situation, the witnesses who have testified here are supporters of tractors, the court cannot accept these testimonies 100%, the party claiming damages strengthened the Public Prosecutor's Office's waiver against the defendants Mercurieu Jean Pierre and Vilème Duclona, we applaud it, there is a procedure for judging in absentia, the Public Prosecutor should issue a warrant for the arrest of these fugitives. Where are they? The Public Prosecutor's Office has been barking up the wrong tree.

**Mr. Joseph Descharles:** We are faced with a complex case, where some thirty little houses were burned down. By whom? The commune of Irois belongs to us too, building a house costs a lot, we cannot tolerate this. Justice is not politics but that has brought us before the court. Keeping in mind all of these parameters in this case, you can issue a decision that cannot be quashed. They are all presumed innocent, they are not hoodlums, they are people like us, although the party claiming damages identifies them as hoodlums.

The Public Prosecutor's Office identifies them as individuals, in this case we can look for the true perpetrators, the court cannot accept the statements of witnesses that testify due to their affiliation with political parties. The Public Prosecutor's Office, the party claiming damages, they recognize there was uncertainty. The first two witnesses said that Marc-Arthur Conte was at the wake. The Public Prosecutor's Office recognized that what is essential has not been said. Who burned it down? Where did they put their hand in the bag? The uncertainty benefits the defendant. They are all innocent. The 1835 lawmaker rightly pointed out the state of mind and intention of arsonists. The arsonists are still in the department; is the Public Prosecutor's Office giving me a golden gift, thank you Public Prosecutor, of mitigating circumstances? "I want it I take it"; they are not guilty; in the impossible event of a denial, there are mitigating circumstances for those who have not been prevented from being charged.

For allotting damages...one of the plaintiffs declared that he received a government subsidy. In this case, the counsel for the defense asked the court to apply Article 383, par. 4. Otherwise, that it order the defendants to serve three years, or even the lesser punishment, that would be fair.

The court asked the evidence to be submitted in order to render its decision within the legal timeframe. Issued from the bench.

**LAW:**

Did the defendants Marc-Arthur Conte, Lissage Viliena, Michelet Noel, Lifaite Livers, Ebert Saintelus, Vilème Duclona, Smith Bajon, Mercurieu Jean-Pierre, Bel Benissoit, France Izmé, Bel Jean-Louis, Kelleman Charles, commit the crime of arson against Ms. Glossel Ligonde, André Marc Vilssaint, Ms. Gérard Charles, Ms. Antoine Kesnel, Thelismène Pierre-Louis, Jean Noel Gislaïne, Louis Frederick, Petit Blanc Denis, Delicia Pierre-Louis, Raymond Jean Noel, Vanite Logis, Izmé Mary, Ms. Canès Jean-Pierre, Destone Lebon, Celeste Zamor, Ms. Jean Daniel Laguerre: Lissage Matyre, Lebon Macula, Boniface David, Maurice Auguste, Julio Auguste, Jean-Pierre Venita, William Julien, Andre Dorval, Ms. Samuel Michel, Izmé Gaspard, Lorena Wilbert, Flobert Milord, François Renold, Ms. Paul Desrosiers, Izmé Jude, Romelus Moïse, Ms. Sansarick Mardy, and Marie Monique Noel?

If the answer is yes, wouldn't the strictest consequences of the Criminal Code apply to them?

Nevertheless, are there mitigating circumstances in favor of the defendants, and if so, wouldn't the court decide according to these circumstances?

What about the damages sought? And the amounts claimed as the estimated prices of the homes that burned down?

What about costs?

- Whereas the case file, procedural evidence



- The hearing transcript
- The submissions of the public prosecutor's office
- The submissions of the party claiming damages
- The submissions of the counsel for the defense
- The legal provisions on the subject matter
- Everything that has been seen and upon review
- Considering that by the order dated October eleven two thousand and twelve and the summons dated July twenty-four two thousand and thirteen, the aforementioned Marc-Arthur and Co. were summoned to the Criminal Court of Jérémie, charged with the crime of arson committed to the detriment of Ms. Glosset Ligonde et Co.
- The defendants denied the acts with which they were charged;
- According to the testimonies of the witnesses heard during the investigation, the acts alleged against the defendants have been proven;
- Therefore the strict consequences of the Criminal Code apply to the Defendants:
- Nevertheless, this event took place on the occasion of the death of one Odfort Bajon, who was close to the defendants;
- These defendants attributed the death of Odfort Bajon to a supernatural[sic] illness stemming from the victims of the fire;
- The defendants might not have been able to take possession while mourning Odfort Bajon, [which cost them dearly[sic]
- Consequently, it is appropriate to ascribe mitigating circumstances to them;
- Therefore the defendants are subject to the strictest consequences of Article 382, par. 2 of the Criminal Code, which stipulates:

"If the punishment is that of forced labor in perpetuity, the court shall apply the punishment to the time of reclusion."

- Considering that the victims experienced atrocious mental suffering upon seeing their homes go up in flames or destroyed underneath stones, hammer, or max[sic]
- They had to sleep outdoors after their homes were destroyed;
- Consequently, these homes must be paid for at their fair price;
- The victims suffered actual damage that merits reparation;
- The damages they are requesting are legal and shall be allotted to them;
- All losing parties must pay costs.

**NOW, THEREFORE**

The Court convicts the defendants: Marc-Arthur Conte, Lissage Viliena, Michelet Noel, Lifaité Livers, Saintius Ebert, Vilème Duclona, Smith Bajon, Mercidieu Jean-Pierre, Benissoit Bell, France Izmé, Jean Louis Bell, Charles Kelleman, to three years of forced labor pursuant to Article 382, par. 2 of the Criminal Code, which punishment was read aloud at the hearing and inserted into the judgment. They are jointly and severally ordered to pay 100,000 gourdes for the houses made of sheet metal that were burned or destroyed, and 500,000 gourdes for the houses in concrete that were burned or destroyed, and are jointly and severally ordered to pay 1,000,000 (one million) gourdes in damages to the victims Ms. Glosset Ligonde, André Marc Vilssaint, Ms. Gérard Charles, Ms. Antoine Kesnel, Thelismène Pierre-Louis, Jean Noel Gislaïne, Louis Frederick, Petit Blanc Denis, Delicia Pierre-Louis, Raymond Jean Noel, Vanite Logis, Izmé Mary, Ms. Canès Jean-Pierre, Ms. Destone Lebon, Celeste Zamor, Ms. Jean Daniel Laguerre, Lissage Matyre, Lebon Macula, Boniface David, Maurice Auguste, Julio Auguste, Jean-Pierre Venita, William Julien, Andrel Dorval, Izmé Gaspard, Lorena Wilbert, Flobert Milord, François Renold, Ms. Paul Desrosiers, Izmé Jude, Romelus Moïse, Ms. Sansarick Mardy, Marie Monique Noel, and are ordered to pay costs and expenses. It is declared that the Lespinasse Law will be applied in favor of the defendants, and that the fugitive defendants will be judged in absentia.

Judgment rendered and pronounced by me, Mr. Jean Baptiste Louis Jean, Attorney, Judge, assisted by Clerk Jean Serge Eugene and Court Usher Osna Jean Petit. In the presence of Mr. Rosny Saint-Louis, Government Commissioner, Clerk from the Public Prosecutor's Office, at a public criminal hearing on Tuesday, August thirteen, at 6:00 p.m., in the 210<sup>th</sup> year of independence.

It is hereby ordered that all process servers enforce this judgment, that all public officers at the civil courts support them in doing so, and that all police inspectors or other law enforcement agents assist them in their efforts, where legally required to do so.

In witness whereof, the draft of this judgment was signed by the Judge and the Court Clerk.

Signed: Mr. Jean Baptiste Louis Jean, Attorney, Judge at the Civil Court of Jérémie, and Jean Serge Eugène, Court Clerk.

COLLATED

TRUE CERTIFIED COPY

[illegible stamp] [signature]  
Mr. Jean Serge Eugène, Clerk of the  
Court of First Instance of Jérémie



République d'Haïti

AU NOM DE LA RÉPUBLIQUE

L'An deux mille treize, An 210° de l'Indépendance et le mercredi douze Août à une heure de l'Après midi.

Nous, Me Jean Baptiste Louis Jean, juge au tribunal civil de Jérémie, assisté du Greffier Jean Serge Eugène et de l'huissier audiencier Osna Jean Petit, en présence de Me Rosny Saint Louis Commissaire du gouvernement, occupant le siège du Ministère public, composant le Tribunal Criminel de ce ressort siégeant sans assistance de jury, dont l'ouverture a été fixé au lundi premier juillet deux mille treize, conformément à la loi, compétemment réuni au palais de Justice de cette ville, en audience publique à l'effet de procéder au jugement introduit contre :

- |                       |                    |                    |                        |
|-----------------------|--------------------|--------------------|------------------------|
| 1) Marc -Arthur Conte | 2) Lissage Viliena | 3) Michelet Noel   | 4) Lifaite Livers      |
| 5) Saintilus Ebert    | 6) Duclona Vilerme | 7) Smith Bajon     | 8) Mercurieu Jn Pierre |
| 9) Benissoit Bel      | 10) France Izmé    | 11) Jean Louis Bel | 12) Charles Kelleman   |
- et Co. Tous accusés d'incendie aux préjudices des Izmé Gaspard et Co.

Les accusés extraits de la prison civile ont conduit à l'audience libre et sans fer, seulement accompagné des Agents de l'APENA pour les empêcher de les évader et ils sont assistés de Me Osnel Sejour ; Me Jean Fedy Charles, Me Joseph Descharles du barreau de Jérémie.-

Cette affaire étant celle qui doit être jugée sans assistance de jury d'après la loi modifiant le CIC.

**FAITS** le président de la Cour a déclaré l'audience criminelle du jour est ouverte puis il a interrogé les accusés sur les noms, prénoms, âge, profession demeure et domicile ?

Le premier accusé a répondu se nommer marc Arthur Conte âgé de 46 ans, enseignant de profession né aux Irois y demeurant et domicilié.

Le deuxième accusé a répondu se nommer Lissage Viliena âgé de 68 ans, cultivateur de profession né à Mandou (4° section) y demeurant et domicilié.

Le troisième accusé a répondu se nommer Michelet Noel âgé de 32 ans, cultivateur de profession né aux Irois y demeurant et domicilié.

Le quatrième accusé a répondu se nommer Lifaite Livers âgé de 43 ans, cultivateur de profession né aux Irois y demeurant et domicilié.

Le cinquième accusé a répondu se nommer Ebert Saintilus, âgé de 50 ans, cultivateur de profession né aux Irois y demeurant et domicilié.

Le sixième accusé a répondu se nommer Duclona Vilerme, âgé de 26 ans, marchand de profession né aux Irois demeurant et domicilié à Port-au-Prince, Bicentenaire Villade de Dieu.

Le septième accusé a répondu se nommer Smith Bajon âgé de 31 ans, électricien de profession né à aux Irois demeurant et domicilié à l'Anse d'Hainaut.

Le huitième accusé a répondu se nommer Mercurieu Jean Pierre âgé de 63 ans, cultivateur de profession né aux Irois y demeurant et domicilié

LE TRIBUNAL CRIMINEL  
DE JÉRÉMIE  
PAR Jean Mue Telan  
LE 09-13-2013-13h05  
No

Le dixième accusé a répondu se nommer Izmé France âgé de 27 ans, élève de profession né aux Irois y demeurant et domicilié.

Le onzième accusé a répondu se nommer Bel Jean Louis âgé de 29 ans, cultivateur de profession né aux Irois, y demeurant et domicilié (Matador 3<sup>e</sup> section).

Le douzième accusé a répondu se nommer : Charles Kelemann, âgé de 35 ans, pêcheur de profession, né aux Irois 3<sup>e</sup> section, y demeurant et domicilié.

Mackenson ainsi connu ; Meretus Beaublanc, Dieuné Jean Noel , Elie Jean Zamor, Bel Lucnord ; Aubourg Julbert, Tijo Deruisseau , Francky Aubourg ; Wilsaint Duclona ; Lenord ; Bajon, Dely Johny ; Louis Charles Florismé , Steeve Obès , Ysias Dimanche, Souverain Merais, Pierre Guerson , Obès Noel , Pierrot Boileau ; Bien-Aimé Noel ; Sorel Noelsaint, Tenia ainsi connu , Tizout Ainsi connu, Merlème Bajon ; Alain Duclona ; Rejean Berger ; Paulo Cadet ; Wilfrid Cenal ; Lionel Fleriza ; Flonillus Fleriza, tous accusés en fuite.

Le président de la cour a avertir le conseil de la défense des accusés qu'il ne peut rien dire contre leur conscience ni contre le respect du aux lois et qu'il doit l'exprimer avec décence et modération , il a également averti le conseil des accusés d'être attentif à ce qu'ils vont entendre et ordonner au Greffier en siège de donner lecture de l'ordonnance de renvoi du juge d'instruction ainsi que de l'acte d'accusation.

La partie civile : Mes Mercier Josma, Yvon Janvier, Ariel Chery, Antoine Michelet Sanon et Jean Michel ont obtenu acte de leur Constitution pour la defense de leurs clients.

Conseil de la défense, Mes Joseph Descharles ; Rosevelt Charles ; Osnel Sejour et Jean Fedi Charles ont obtenu acte de constitution pour la défense de leurs clients.

Le conseil de la défense demande acte du fait que les noms de Vilème Duclona et Izmé France n'est pas figuré dans l'arrêt ordonnance, l'acte lui été accordé.

Le Ministère public a combattu du fait que quand on dit Marc-Arthur Conte et Co le reste sont là.

La partie civile abonde dans le même sens avec le Ministère public.

Le conseil de la défense revint à la barre à sollicité et obtenu acte.

« Selon la doctrine, il est de principe que l'arrêt de mis en accusation soit le seul acte...

Le conseil de la défense s'enchaîne, abonde dans le même sens du fait qu'il y a deux parmi ses accusés n'ont pas été cités, sur ce il réserve les plus formelles de droit.

Le Ministère public revint à la barre tout en disant au tribunal ne laisse pas induire par le conseil de la défense, la partie civile a fait chorus.

Le conseil de la défense a encore la partie a déclaré au tribunal que l'acte d'accusation soutienne l'ordonnance arrêt de clôture.

Le conseil de la défense ne dit pas, qu'il n'a pas reçu la citation de comparution, mais la signification de l'acte d'accusation que leurs noms ne figurent pas.

Après quoi le président de la cour a déclaré aux accusés ce qui est contenu dans l'acte d'accusation et dit aux accusés. « Voila de quoi vous êtes accusés » vous allez entendre les charges qui seront portées conte vous.

Me Antoine Rosny St Louis, av, Commissaire du gouvernement, occupant le siège du Ministère public, ayant sollicité et obtenu la parole a exposé le sujet de l'accusation.

Ministère Public ayant sollicité est obtenu la parole a demandé au tribunal d'entendre les témoins, puisque un fait d'incendie a été produit aux Irois.

#### Témoins

- 1) Lebon Enel (Abs)
- 2) Souverain Cenal (Près)
- 3) Evens Francois (prés)
- 4) Larrieux Lifranc (Pres)
- 5) Milord Belgi (Abs)
- 6) Elistène Louis (Abs)
- 7) Remy Milfort (Prés)
- 8) Cajus Maxo (Abs)
- 9) Resima Fednor (Prés)
- 10) David Ecclésiaste (Abs)
- 11) Mme Wiliame Lebon (Abs)
- 12) Franckel Izmé (Prés)

La partie civile ayant sollicité et obtenu la parole, a déclaré au tribunal qu'elle n'a pas reçu la liste des témoins cités dans le cadre de cette affaire, et a demandé d'ordonner au Ministère public de la communiqué la liste de ces témoins qui sont présent aujourd'hui.

La partie civile proteste contre les témoins.

Le Ministère public a pris le contre pied contre la déclaration de la partie civile, du même coup il a fait appelle à l'article 249 du CIC.

Le conseil de la défense n'a aucune objection contre la liste des témoins signifiés par le Ministère public,

#### Témoins

Le premier témoin après prêté serment de parler sans haine et sans crainte, de dire toute la vérité rien que la vérité a été interrogé sur ses nom, prénom, âge, profession, demeure et domicile, s'il ne connaissait les accusés avant le fait mentionné dans l'acte de l'accusation, si les parent, allié, domestique ou serviteur des parties, a déclaré se nommer :

Souverain Cenal, âgé de 43 ans, cultivateur de profession, né aux Irois y demeurant et domicilié, je ne suis ni domestique, ni serviteur d'aucune des parties.

La partie civile ayant sollicité et obtenu la parole, a déclaré au tribunal qu'il renonce à l'audition de ce témoin, puis qu'il a été impliqué dans cette affaire.

Le Ministère public n'a pas d'objection.

Le conseil de la défense a la parole a dit, au lieu de dire renoncer c'est plutôt récusé,

La partie civile a formulé ses réserves les plus formelles de droit quant à l'audition de ce témoin.

Le tribunal fait droit à la demande du ministère public en auditionnant ce témoin et la continuation de l'affaire.

En substance il a déposé comme suit : Magistrat : Mwen vi-n la pou'm bay kèk enfòmasyon, se yon bagay ki te pase nan nwit, nou te gen yon moun ki malad, mesye Marc -Arthur Conte li menm l'al achte yon medikaman le'l tounen se son li t'ap fè mwen te rete kote'l la.

Mwen leve mwen wè lapolis ap ranmase moun, mwen pa konnen anyen, yo se bon moun mwen pa konn tande non akize sa yo nan boule kay, Marc-Arthur Conte te chita sou yon tab l'ap fè son.

Ce témoin a déposé oralement et a répondu à toutes les questions qui lui ont été posés. Après la deposition, le juge a demandé au témoin si ce sont des accusés présent qu'il a entendu parler et aux accusés qu'ils veulent répondre a ce qui d'être dit contre eux et la deposition a fait l'objet des débats.

Le deuxième témoin après prêté serment de parler sans haine et sans crainte, de dire toute la vérité rien que la vérité a été interrogé sur ses nom, prénom, âge, profession, demeure et domicile, s'il ne connaissait les accusés avant le fait mentionné dans l'acte de l'accusation, si les parent, allié, domestique ou serviteur des parties, a déclaré se nommer :

François Evens, âgé de 38 ans, Ingénieur de profession, né à l'Anse d'Hainault demeurant et domicilié aux Irois. « Je ne suis ni domestique, ni serviteur d'aucune des parties. »

La partie civile a demandé au tribunal de faire communiquer pour le témoin sa citation et une pièce d'identification, ce qui a été fait.

La partie civile a formulé ses réserves les plus formelles de droit quant à l'audition de ce témoin.

En substance il a déposé comme suit : Magistrat : mwen ka pale de Lissage Viliéna et Marc-Arthur Conte, lissage pat la pou jou a e Marc-Arthur te al acheté yon medikaman Anse d'Hainault, se nou ki te rele'l tounen et l'el tounen se son li t'ap bay. Mwen pa ka di kiyès ki fèl , mwen pa konnen si Vileme Duclona te Oziwa , mwen konnen'l mwen pa konnen ke Marc-Arthur Conte konn vann gaz , mwen pa tandè ke Marc-Arthur Conte boule kay ak gazolin, mwen rekonèt Marc-Arthur Conte depi 8 tan , kòm yo repwoche'l de sa , men mwen pa konnen'l ka fè sa.

Ce témoin a déposé oralement et a répondu a toutes les questions qui lui ont été posés. Après la deposition, le juge a demandé au témoin si ce sont des accusés présent qu'il a entendu parler et aux accusés qu'ils veulent répondre a ce qui d'être dit contre eux et la deposition a fait l'objet des débats.

Le troisième témoin après prêté serment de parler sans haine et sans crainte, de dire toute la vérité rien que la vérité a été interrogé sur ses nom, prénom, âge, profession, demeure et domicile, s'il ne connaissait les accusés avant le fait mentionné dans l'acte de l'accusation, si les parent, allié, domestique ou serviteur des parties, a déclaré se nommer :

Vilfranc Larrieux , âgé de 38 ans, animateur de profession, né aux Irois y demeurant et domicilié « je ne suis ni domestique, ni serviteur d'aucune des parties. »

En substance il a déposé comme suit : Magistrat : Odfort Bajon , se moun Iwa , li te malad ; Patizan Odfòd Bajon pran Lari , yo di si Odfort Bajon mouri yap redwi vil la an sann :

Acte accordé au conseil de la defense, paske temoin sa a se yon viktim li ye.

Marc-Arthur se aktè # 1 li ye nan dosye . Mwen te di'w gen 34 ka kip ase nan Iwa , aksyon yo montre ke yo pa bon moun., se lanmò Odfort Bajon ki sisite akksyon sa a. Izyas ak Wilfrid se sòlda yo ye , leta sibvansyone yon pati pou repare kèk kay , kay pam pa boule , te gen kay Kayiman ki te boule , se menm woulib sa a yo pran.

La partie civile a demandé au témoin par le biais du tribunal comment France Izmé s'est livré lui-même et Vilème Duclona était arrêté à Port-au-Prince ?

R- Franz Imé te deklare ke li menase de mò, li al rann tèt li nan Lapolis.

*Le conseil de la défense a questionné le témoin par le biais du tribunal :*

- Eske li te politik ?
- Wi
- Kote li te ye lè sa ?
- Mwen te Iwa
- Eske marc-Arthur konn vann gazoline ?
- Non
- Eske ke li te wè Marc-Arthur ap boule kay o Iwa ?
- Wi
- Ki pati politik Odford Bajan te ye?
- Mwen pa konnen , sof ke mwen ta KEP.
- Sou ki pati Odford Bajan te eli?
- Mwen pa konnen
- Ou nan yon pati politik?
- Non
- Ak kisa ou te wè Marc-Arthur Conte ap mete dife a?
- Ak yon galon gazolin
- Ki rad ki te sou li jou sa a ?
- Mwen pa konnen.

Demande d'acte accordée

De fait que le témoin a déclaré qu'il ignorait la couleur du vêtement que portait, mais qu'il a vu que Marc-Arthur tenait un gallon de la gazoline.

Se te yon twoup ki te ansanm ki t'ap boule kay yo.

- Eske li te wè Vilerme Duclona t'ap met dife ? Wi ak gaz ak pay
- Eske li pat fè foto? Mwen pa jounalis
- Eske Marc-Arthur Conte se kandida? Mwen pa konnen.
- Ou se kandida ? Non
- Pwoblèm mwen gen avè yo se paske yo chwazi detui Iwa.
- Ou te menase?Non
- Eske ou te gen lòt moun ki t'al kache avè'w? Non
- Eske ou konnen tout akize sa yo ? Wi
- Kay yo te kòmase boule a pati 7è PM a x.
- Eske li te Matadò, li te Iwa tou? Non
- Koman fè li di se mesye sa yo ki boule kay yo? A pati lòt temwen e viktim yo.

Acte accordé au conseil de la défense du fait que le témoin a dit qu'il n'a pas vu, mais selon les dires des témoins et des victimes.

- Ki wòl chak moun sa yo nan mete dife depi Matadò jisko Iwa ? Se yon gwoup yo ye.
- Kote li te ye? Mwen te Iwa
- Se Marc-Arthur ki t'ap patwone twoup la.
- Kòman ou wè tout bagay sa yo? Kote mwen te abrite nan.

Ce témoin a déposé oralement et a répondu a toutes les questions qui lui ont été posés. Après la deposition, le juge a demandé au témoin si ce sont des accusés présent qu'il a entendu parler et aux accusés qu'ils veulent répondre a ce qui d'être dit contre eux et la deposition a fait l'objet des débats.

**Mercidieu Jean Pierre : Reponn**

- Eske ou te wè-m ? Wi
- Ki kote ou te ye ? Matadò – Iwa?
- Ou te mete dife kay Raymond Jean Noel



Michelet Iwa reponn  
Mwen an gen pwoblèm avèk nou poutèt pati politik

- Majistra Michelet kope zòrèy Destone Lebon. Li te mennen-m Tibiron

**Izmé France :** Mesye Vilfranc gen pwoblèm avèk mwen . poutèt pati politik, mwen te al rann tèt mwen paske tout moun lakay mwen vle pou'm fè men-m pati politik ak yo.

**Duclona Vilème :**Mwen te arete Pòtoprins , kiyès ak ki manda ? Mwen pa konnen mwen pat la.

**Marc-Arthur Conte :**Mwen pa nan nan menm pati politik ak Larrieux, mwen pa konn vann gaz.

- Ak konbyen galon gaz ou te wè'm ? de Matador a Iwa.

Le quatrième témoin après prêté serment de parler sans haine et sans crainte, de dire toute la vérité rien que la vérité a été interrogé sur ses nom, prénom, âge, profession, demeure et domicile, s'il ne connaissait les accusés avant le fait mentionné dans l'acte de l'accusation, si les parent, allié, domestique ou serviteur des parties, a déclaré se nommer :

Milfort Remy , agé de 41 ans, pêcheur de profession né aux Irois, y demeurant et domicilié "Je ne suis ni domestique, ni serviteur d'aucune des parties".

La partie civile a demadé au tribunal d'ordonner à ce témoin d'exhiber sa citation et sa carte d'identification nationale .

La partie civile a formulé les reserves les plus formelles de droit quant à son audition.

En substance il a déposé comme suit: Magistrat: Marc-Arthur Conte te al Anzedeno al achte yon medikaman, lè moun nan mouri, nou rele Marc-Athur retounen , lèl tounen se son li t'ap fè.

Ministère Public :

- Ak kisa yo boule kay sa yo ? Mwen pa konnen , mwen pa di'w ke tout moun sa yo se moun debyen yo ye. Mwen pa rete menm kote avèk yo.

Conseil de la Défense : Kote Marc-Arthur Conte te ye ? Nan vèy la

- Eske li te gen yon galon gazolin nan men'l li t'ap boule kay Iwa ? Non

- Marc-Arthur te kandida, li toujou gen moun Iwa? Wi

- Eske ou konn tande Marc-Arthur nan boule kay Iwa ? Non

- Marc -Arthur te kandida, li te toujou gen moun Iwa , li te kandida chak moun te nan pati pa yo ; yo emplike'l paske Odfort se bò frè'l.

Matador – Iwa 9 minit ; taxi 15, 25 goud.

- Eske Larrieux ka wè kote kay yo ap boule a? Li ka wè kèk kay
- Eske Larrieux ka idantifye yon moun kap mete dife kote li ye? Si se lajounen li ka wè, lan nuit , non
- Eske gen kay beton ki boule ? Wi yo pa kole ansanm.
- Se pa premye fwa yo mete dife Iwa.
- Eske kay sa yo boule vre? Wi
- Eske gen youn nan moun sa yo ki komèt zak la ? Mwen pa konnen.

Ce témoin a déposé oralement et a répondu a toutes les questions qui lui ont été posés. Après la deposition, le juge a demandé au témoin si ce sont des accusés présent qu'il a entendu parler et

Le Cinquième témoin après prêté serment de parler sans haine et sans crainte, de dire toute la vérité rien que la vérité a été interrogé sur ses nom, prénom, âge, profession, demeure et domicile, s'il ne connaissait les accusés avant le fait mentionné dans l'acte de l'accusation, si les parent, allié, domestique ou serviteur des parties, a déclaré se nommer :

Resuma Fedner , agé de 27 ans, maçon de profession né aux Irois, y demeurant et domicilié (popiggi) Il est le fils d'une plaignante.

En substance il a déposé comme suit:

Magistrat : Mèkredi 28 oktòb 2009, Mesye sa yo pran lari Y'al kay yon mesye yo rele Senèk.

Marc-Arthur Conte, Lifèt Livè, Aubourg Francky, Gilbert et Co.

29 oktòb 10 heures : menm yo menm nan pase nan mache a . yo di tout moun kite mache a, anpil kite mache a genyen ki te rete.

### *La partie civile*

- Pou fè yon kay li koute chè ? Wi;
- Eske akize sa yo gen kay yo ki boule? non
- Eske yo boule kay ki pou yo? Non
- Marc-Arthur se antèt li te ye.

### *Le conseil de la défense a questionné le témoin par le biais du tribunal*

- Kote ou te ye ? Mwen te kay Lòsa toupren nan kay li t'ap mete dife a. Mwen te wè Marc-Arthur ak yon galon gaz nan men'l . Marc-Arthur te pran gaz nan men yon mesye yo rele Milot.
- Eske ou te wè Marc-Arthur ap mete dife nan Matadò rive Iwa. ? Iwa mwen pat wè tout men li t'al dèyè Anzdeno
- Mwen wè Marc-Arthur ak je pam lèl t'ap mete dife a.
- Eske ou te wè Duclona Vilème t'ap mete dife ? Se dènye chimè apre Marc-Arthur Conte li ye , li boule kay tonton'l.

Ce témoin a déposé oralement et a répondu a toutes les questions qui lui ont été posés. Après la deposition, le juge a demandé au témoin si ce sont des accusés présent qu'il a entendu parler et aux accusés qu'ils veulent répondre a ce qui d'être dit contre eux et la deposition a fait l'objet des débats.

### *Duclona Vilème Reponn*

Mande'l pou mwen poukisa li pote plent pou mwen an 2012 ? Mwen pat pote plent pou li . Kòm moun li te wè k'ap boule kay papa'l.

### *Izmé France :*

Misye gen pwoblèm avèk mwen depi lekòl, sou kesyon politik ; yo nan brigad mache bat moun.  
Marc-Arthur : Explike pwoblèm ki fè temwen sa a vin pale kont li.

Le sixième témoin après prêté serment de parler sans haine et sans crainte, de dire toute la vérité rien que la vérité a été interrogé sur ses nom, prénom, âge, profession, demeure et domicile, s'il ne connaissait les accusés avant le fait mentionné dans l'acte de l'accusation, si les parent, allié, domestique ou serviteur des parties, a déclaré se nommer :

Franckel, age de 42 ans, cultivateur de profession ne aux Irois, y demeurant et domicilié. Je ne suis ni domestique ni serviteur d'aucune des parties.

Le conseil de la défense a demandé au tribunal d'ordonner au témoin de présenter sa citation et sa carte d'identification. Ce qui a été fait.

Le Ministère Public, a demandé l'application de l'article 256 du CIC conte le témoin Franckel Ismé.

La partie civile a demandé au tribunal d'entendre le témoin à titre de renseignement.

Le conseil de la défense s'y oppose quant à l'audition du témoin Franckel Izmé.

La partie civile a déclaré au tribunal que la loi ne s'oppose à l'audition d'un cousin de l'accusé.

Le conseil de la défense réitère sa demande.

Le Ministère public, partie principale et poursuivante dans le procès ; art 256 du CIC, arrêt du 23 Avril 1989.

La partie civile a déclaré qu'il n'y a pas d'alliance.

Le conseil de la défense, à la parole a dit qu'il y a une doute, le doute profite aux accusés.

Le tribunal : Le texte ne parle pas le témoin sera entendu.

En substance il a déposé comme suit : Magistrat : Mardi 27 mal Okay (paske mwen gen pitit mwen ki lekòl Okay ; mwen moute yon boat ak Michelet li pa touche nan menm , lè mwen retounen yo dim Odfort malad se pote yo potel, se Michelet ki pote'l , mwen di bon Michelet pa di'm sa ?

Odfort vin mouri , tout moun mache a di nan ranmase, paske yo te di y'ap boule yo an sann. Mwen gen yon akolit mwen ki rele'm ki di'm yo met dife lakay li , li site non tout moun ki te nan boule kay li , pandan mwen abrite mwen, mwen tande gen yon gwoup ki di : an al boule kay Destone nan, après mwen monte yon pye mango labich mwen wè yap boule, Après mwen desann m'al kache nan yon touf bannann , mwen wè Franky ki rele Gilbert ki di gaz la fini epi li di se kay Marc-Arthur pou l'al pran'l. Vilème vin parèt ak yon galon gaz , yal mete dife kay Senta.

#### **Ministère Public**

Vè 7 :30 PM kay sa yo te kòmanse boule ? Mwen te kache ; Lapolis pat kapab.

#### **La partie civile a questionné le témoin par le biais du tribunal.**

Kiyès ki patisipe nan met dife a ? Mwen pa ka di kiyès ki patisipe nan met dife.

#### **Le conseil de la défense a questionné le témoin par le biais du tribunal.**

- Eske ke lòt akize li pa site non yo , eske yo pa patisipe ? Lòt moun gen dwa wè yo.

- Mwen pa janm gen kont ak yo youn la.

- Eske ou nan menm pati politik avèk akize sa yo? Non

- Eske ou gen pwoblèm ak Izmé ? Non

- Moun pa konn fè moun malad, se Bondye, Wi Marc-Athure fè politik.

- 2000 Kandida fusion , apre sa li te reprezante Preval.

- Ravaj k'ap fè la a se sou modere l'ap fèt.

- Bò frèl la ki mouri a pat nan menm gwoup politik avèl (Marc-Arthur)

### Avons entendu les plaignants

Le premier plaignant a répondu se nommer : Destoine Lebon, âgé de 68 ans, cultivateur de profession né aux Irois, y demeurant et domicilié.

En susbance il a déclaré ce qui suit. Magistrat : Mwen se yon viktim, gen yon gwoup moun ki vin lakay mwen , ki vin pranm yo bat mwen anpil , Lifaite Livers te la, France, Vilème menm koupe zòrèy mwen , yo mennenm kay ti meriken ki se ougan, viliena, lè mwen rive kay Timeriken mwen jwen Marc-athur yo mande'm kisa'm konnen de maladi Odfort ? se talè yo bat mwen . Mwen di yo mwen pa konnen anyen de maladi Odfort , mwen di yo, yo mèt fè sa yo vle avè'm. Ti Meriken vin parèt , li rale kòd la epi li di kisa n'ap fè Destone la a? li fè lage'm aprè sa lifèt banm anpil kalòt , yo te mete Tochon nan kòd tou , mwen paka kouri, yo pranm yo retounen avè'm ankò pou touye'm; Ti Meriken di al touye'm sou kare a. (ironi). Ti Lifèt di Michel ou ale avè'l , lè nou bezwen'l fòn jwenn li . Yo mennenm lopital yo vin dèyèm lopital. Aprè mwen pran lafuite pou Anzdeno vè 6è.

### *Ministère public*

Se Ansèn ki vin mare'm lakay mwen, se sèl Mercidieu ki pat nan tire kou, pou dife mwen pa konnen , tout se zanmi'm , mwen konn jwe ak Lifaite ; se pou kou mwen pran , kay la se dèyè dom yo boule.

Mwen gen 2 kay ki mòmanse rekonstwi, yo poko fini.

### *La partie civile*

- Ki rapò kay boule e kou nou resevwa ? Se Michelet ki koupe zòrèy mwen li vale'l

Le deuxième plaignant a répondu se nommer : Nissage Martyr, âgé 53 ans, marchand de profession né aux Irois, y demeurant et domicilié.

Magistrat : Mwen pa janm bezwen pale, paske Haiti se kriminel ki gade la.

Moun Matadò sa yo ap pase yo di'm si Odfort mouri, se koupe tèt, boule kay . Bajon Odfort vin mouri le 29 oktòb 2009, nèg sa yo mwen sot site la , mwen wè yo ap vini , mwen wè yo mare Destone , Tòchon. Mwen di konm wè nèg sa yo pase devan komisaria , se lè sa map konnen si nèg sa yo ap gen lavi. Aprè mwen wè Destone rantre lopital la , mis yo te pè anpil . Lissage te a la tèt bann, vè 6è PM, mwen te lakay mwen .M wè lifaite rele'm li di'm gen 4 kay ki boule déjà . Mwen di madanm mwen al chache yon kote pou'l dòmi . Aprè mwen kache nan yon touf vetivè , mwen wè tout kay yap boule . Aprè yo rele Marc-Athure se demi galon gaz mwen rete. Michelet, Lifaite, Lissage , lè yo rele Marc-Arthur mwen di kay mwen an pap boule paske li se konpèm, se lè yo fin boule kay mwen an, yo boule kay M. Senès.

### *Ministère Public*

08 Avril 2008, se Vilème Duclona ki domaje'm ak yon 12 ; 14 kay boule an 2007, se yo ki boule yo . Tout nèg sa yo se patizan Bajon yo ye , Se Marc-Arthur ki otè principal , Ti Meriken sove.

Vilème ak Lissage di mwen koupe pye'l map fini avèl.

Vè 9 vè PM-10 zè, nèg yo boule kay mwen . Mwen gen yon sèl kay ki boule.

Le troisième plaignant a répondu se nommer : Ismé Judès , âgé 26 ans, pêcheur de profession né aux Irois, y demeurant et domicilié.

En substance il a déclaré ce qui suit : Magistrat : Le 27 Octòb 2009 , mwen chita lakay mwen tou  
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procès a , mwen wè yon ekip nèg ki ap pase ki li depi Odfort maladi , se boule kay , koupe tèt,  
Marc-Arthur te a la tèt.

Le Conseil de la défense ayant sollicité et obtenu la parole a déclaré au tribunal que :

Ismé , Judès n'est pas victime dans cette affaire, il a été victime depuis 2008 , cette affaire ne lui concerne pas . D'écarter le plaignant pure et simplement.

**Le Ministère public** a déclaré même s'il n'a pas été victime, s'il était présent le tribunal peut l'entendre à titre de renseignement.

*La partie civile* a demandé au tribunal de l'entendre parce qu'il est un plaignant.

*Le conseil de la défense* : S'y oppose sur cette question.

**Le Ministère public** a déclaré au tribunal tout ce qui avance en droit, abonde.

Le conseil de la défense réitère sa demande, ce plaignant n'a pas entendu.

Le quatrième plaignant a répondu se nommer : François Prenel, âgé 47 ans, ébéniste de profession né aux Irois, y demeurant et domicilié.

Magistrat : 27 Octob 2009, Odford debake nan Kayiman.

Le conseil de la défense a demandé au tribunal d'ordonner au plaignant de communiquer la copie de la citation. Le nom de ce plaignant ne figure pas dans l'arrêt d'ordonnance.

Le Ministère Public, a déclaré au Tribunal que c'est grâce à un consensus qu'on va arriver à entendre 8 parmi 40 plaignants.

Ce 4<sup>e</sup> plaignant n'est pas entendu.

Le cinquième plaignant a répondu se nommer : Mme Julia Dorval Souverain, âgé 46 ans, marchande de profession née aux Irois, y demeurant et domiciliée.

En substance elle a déclarée ce qui suit : Magistrat : le 28 octòb 2009, yo rele'm ak No prive, yo dim si ou nan mache a, kite mache a vini paske Odford Bajon malad, s'il mouri se koupe tèt boule kay. Men Eric Bell te di'm kay mwen pap boule. Yon lòt moun rele'm li di'mm si mwen lakay mwen kite kay la . Aprè m'al kache nan yon lekòl, mwen wè tout moun ki t'ap mete dife : Lissaj V. Francky, Gilbert, Benissoit, Boileau ; Jean Louis, Marc-Arthur.

France Izmé rele Marc-Arthur pa gen gaz non. Marc-Arthur pote gaz ak men'l menm.

#### **Ministère public.**

Mwen gen 3 kay se kay Dalbeton an ki boule. , mwen pat gen anyen ak moun sa yo. Kay pam boule a 8è . Marc-Arthur se pwomotè , li te gen yon gallon gaz nan men'l.

M p'at wè Mercurieu-Hebert-Vilème- Michelet: Mwen pa konn poukisa yo boule kay nou, se yo ki pou di ki pwoblèm yo gen avèk nou.

Le sixième plaignant a répondu se nommer : Boniface David, âgé 32 ans, enseignant de profession né aux Irois, y demeurant et domicilié.

En substance il a déclaré ce qui suit : Magistrat : Odford Bajon se te pwofesè mwen li te rive malad , li vin kite vil la ale Port-au-Prince . Patizan li yo di si li mouri se koupe tèt , boule kay. 27 Oktòb 2009, Odfort te vini nan vil la, men mwen te mete'm aleka , paske yo te vini asasine'm deja , se frè'm yo asasine nan plas mwen.

Lissage-Marc-Arthur-Vilème-Michelet nan lè 9è 30 PM yo mete dife nan kay mwen.

Mwen pat gen pwoblèm ak yo ditou, se 36 kay ki boule nan Iwa. Ti Meriken se kòmandan an chef lame a. Asistan yo se Viliena ak Marc-Arthur Conte. Marc-Arthur te avèk yon galon gasoline nan men'l.

**Le 7<sup>e</sup> plaignant a répondu se nommer :** Vilsaint André Marc , agé 39 ans, Informaticien de profession né aux Irois, y demeurant et domicilié.

En substance il a déclaré ce qui suit :

Majistra : Vè 3zè PM, Mwen kanpe lakay mwen , mwen te gen yon rankont mwen ta prale , se lè a mwen wè yon gwoup moun k'ap vini ak 2 moun mare se te Destone ak Torchon.

Lifaite- Michelet- Francky-Benissioit-Aubourg . France banm yon kalòt , aprè sa France banm yon kout wòch , figim tire san , aprè mwen kouri m'al kache nan yon touf woze , 9,10 zè mwen tandè bann ap vini Bajon mouri se koupe tèt, boule kay , se lè sa a genyen se lè sa a genyen ki di boule , gen lòt ki di pa boulè . Pandan kay ap kontinye boule, gen yon zanmi'm ki al depoze nou Tibiwon nan yon Fly Boat.

Mwen pat wè.-

Marc-Arthur Conte, Mercidieu, Kelleman.

**Le 8<sup>e</sup> plaignant a répondu se nommer :** Antoine Kesnel , agé 53 ans, enseignant de profession né aux Irois, y demeurant et domicilié.

En substance il a déclaré ce qui suit :

Majistra : Odfort Bajon malad , li retounen lakay li, mwen pat konprann kijan patizan'l yo di , s'il mouri se koupe tèt , boule kay. Jedi 29 oktòb 2009 , mwen te kache , men pa gen moun ki te ka pwoche nan zòn yo.

Yo kraze yo, brize, Madan Marc-Arthur fè yon deklarasyon li di yo boule kay pitit pou yo pa boule kay papa. Gaz yo te fini. Marc-Arthur pote lòt gaz pou yo boule kay la. Se sèlman Mercidieu mwen pat wè nan 12 la yo. Yo tout se moun Iwa yo ye. Yo boule 36 kay . Se general Francky Aubourg, Lissage Viliena, Marc Arthur, Walton, Smith et Co, mwen pa gen relasyon ak Ti Meriken.

*Il est 10h 30 PM, la séance est suspendue pour demain matin à 10h AM.*

### **La séance est reprise**

**Le 1<sup>er</sup> accusé a répondu se nommer :** Marc -Arthur Conte, âgé de 46 ans, enseignant de profession né aux Irois y demeurant et domicilié.

En substance il a interrogé comme suit :

Majistra : Mwen fèt nan komin nan , tout moun se mwen , an 2000 , mwen gen vizyon politik , mwen te nan ESKANP, men mwen pèdi devan fanmi Lavalas. Se Odfort ki di mwen gen lajan refijye nan menm. Kamarad Andre Marc di , se sèl mwen li pat wè , Dye swa louwe se mon konpè nou ye. Odfort te kont mwen , se li kif è mwen pèdi eleksyon an , misye te nan MODERE, mwen menm mwen mwen t'ap fè eleksyon pou Maxime Roumer . FAES banm yon sètifika pou'm jere zafè dlo nan zòn nan nan zòn sa a. Kounye a popilasyon an ap soufri pou dlo. Mwen andedan legliz , tout pè yo apresye'm . Popilasyon an repwoche'm mal de zak sa a . 28 oktòb madanm mwen rele'm Mako , Odfort malad anpil , eske mwen pa ta rele Cubain yo pou ba'l yon dènye swen pou li , mwen pran Ernest Oxil , li ale avè'm kote Cubain yo, yo di'm yo pral bay

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Odfort yon premye swen pou mwen. Se konsa yo preskri yon medikaman , se mwen menm k'al a. An demen m'al achte yon lot medikaman . Lè m'ap retounen , yo rele'm nan telefòn pou di-m Odfort mouri. Lè mwen rive, mwen jwenn tout moun ap kriye , mwen di madanm mwen konsole'l, gen yon sè Madanm mwen rele'm depi Ozatazini pou'm mete'l nan mòg , madanm li vin pa aksepte , li di l'ap antere mari'l nan moman sa a , mwen pran aparèy mwen yo , mwen t'ap bay son tout lan nuit nan veye a. An demen m'al dèyè Keloke pou vin pran lajan fè kèk kouròn pou mwen e Douby vin pran kèk imaj pou mwen, se lè sa a mwen resevwa yon kout fil de Andre Marc ki dim poum kite vil la vit paske y'ap vin arete'm , paske mwen konn vann gaz , men gen Marc-Arthur Conte et Marc-Athur Leillant. Se konsa mwen wè yon machin UDMO vin arete'm pou machann gazolin epi mwen fè twa jou nan komisarya Dame-Marie a, nan entèwogatwa polisye yo t'ap fè pou mwen , mwen te di se Marc-Arthur Leillant mwen rele paske se li ki konn vann gazolin. Poutèt sa li rele komisè Arisidas pou bal kont randi. Komisè a di ekri nonm jan li konnen li ye a. Yo vin transfere'm isit , depi lè sa a mwen la, mwen pa gen atitid a fè boule kay.

#### **Ministère Public**

- Ki kote ou te ye , lè evènman ki te pase Iwa? Mwen te nan veye bò frè mwen.
- Vè kilè dife a te pran? Mwen pa konnen mwen pat la.
- Kilè ou konnen afè dife a? Mwen pa konnen a kilè
- A kilè dife a fini? Si ou di'm veye wi, dife non.
- Poukisa yo te di'w retire kòw? Se paske yo te di yap vin arete'm
- Depi kilè yo arete'w? Depi 1e Novanm 2009.
- Kiyès moun ou tande yo di ki fè zak sa a? Mwen pa konnen.
- Ki pwoblèm ou gen ak moun sa a? Pwoblèm politik sèlman

#### **Le Conseil de la défense a questionné l'accusé par le biais du tribunal.**

- Kilè ou te apwann ke kay Iwa boule? Se lè mwen nan wout
- Kilè ou kite kote moun nan mouri ? a 6 zè
- Mwen te retoune Iwa a 6zè 30
- Eske ou te kontan kay sa yo boule? Non
- Eske ou te konnen kay yo pral boule? Non
- Eske ou se yon bon moun? Wi
- Moun ki depoze kont pou ou yo kisa yo gen avè'w? Poutèt politik sèlman

**Le 2<sup>e</sup> accusé a répondu se nommer :** Lissage Viliena âgé de 68 ans, cultivateur de profession né à l' Anse d'Hainault (Mandou 4<sup>e</sup> section) demeurant aux Irois.

En substance , il a interrogé comme suit :

Majistra : Nan lè kay te boule Iwa yo mwen pat la , mwen gentan gen 15 jou andeyò , lèm vin desann nan lèndi , mwen wè Lapolis vin arete'm pou kay boule.

#### **Ministère public**

- Kijan non'w fè site nan zak sa ? Majistra , pitit mwen se majistra nan vil la , mwen pa t'ap janm rantre nan yon bagay konsa. Mwen te andeyò, yon kote yo rele wòch blanch.

**Le 3<sup>e</sup> accusé a répondu se nommer** Michelet Noel Conte, âgé de 32 ans, cultivateur , pecheur de profession né aux Irois (Divino 3<sup>e</sup> section) y demeurant et domicilié.

En substance , il a interrogé comme suit :

Majistra : le 29 janvyè 2010 , lapolis ak yon gwoup Brigad vin arete'm pou sa mwen pa konnen se moun OPL ki akize-m na dosye sa a,

#### **Ministère Public**

- Mwen pa konnen a kilè dife a te pran, ni a kilè li fini, lè mwen te retounen se lakay mwen divino mwen te ale dirèk, se an demen mwen te wè afè dife a.

**Le 4<sup>e</sup> accusé a répondu se nommer** Lifaite Livers , âgé de 43 ans, cultivateur de profession né aux Irois (3<sup>e</sup> section) y demeurant et domicilié.

En substance, il a interrogé comme suit :

Majistra : Mwen se youn nan OPL , mwen te ansanm avèk Majistra Wiliam, epi nou tout te gentan gen djòb na section Galèt Potonye , se li ki pi fò , alò mwen vin pa ak nèg yo . pandan mwen Galèt Potonye , yo dim majistra mouri , poutan se Ofort , mwen pat menm konnen si li te la , mwen te konn travay kont li. Epi yo di KAZEK la fòk yo arete'm kanmèm.

**Ministère public**

Mwen arete le 6 mars 2010 , mwen aret Galèt Potonye (Tabas) ; mwen pa konnen anyen nan bagay sa paske se Galèt Potonye mwen rete.

**Le 5<sup>e</sup> accusé a répondu se nommer** Ebert Saintilus, âgé de 50 ans, cultivateur de profession né aux Irois y demeurant et domicilié.

En substance , il a interrogé comme suit :

Majistra : mwen paka di anyen sou afè dife a, mwen pa nan politik; Odfort pat anyen pou mwen se 5 novanm 2009, mwen wè yo vin arete'm a nojou.

**Le 6<sup>e</sup> accusé a répondu se nommer** Vilème Duclona , âgé de 26 ans, marchand de profession né aux Irois (Cité Laroc) demeurant et domicilié à Port-au-Prince , Bicentenaire Village de Dieu

En substance , il a interrogé comme suit :

Majistra : Mwen pa konn anyen nan afè dife , se Pòtoprens mwen abite , men gen yon kesyon politik , mwen kite Iwa 11 jen 2009 pou ale Port-au-Prince, se machann mwen ye , se yon jou mwen sot vann 14 novanm 2010 , mwen moute yon machin epi te gen diskisyon ant mwen avèk yon lòt moun vin gen yon goumen chofè a kanpe machin nan , li remèt nou bay Lapolis se konsa apre 14 jou yo vin transfere'm isi pou dosye dife ke mwen pa konnen.

**Ministère public**

- Mwen aprann afè dife a se nan radio paske se Port-au-Prince mwen te ye , mwen pa konnen sa Marc-Arthur te ye nan zafè dife a.

**Le Conseil de la defense a questionné l'accusé par le biais du tribunal.**

- Eske ou fè politik ? Wi
- Sa ou te konn fè Iwa ? mwen lekòl
- Kote ou te ye le 29 octòb la ? Pòtoprens
- Kisa ou t'ap fè jou 29 oktòb la ? Mwen t'ap vann sandal
- Lè yo te arete'w , kisa yo te di ou fè ? anyen
- Ou te konnen afè dife sa a pral pase? Non
- Ou te patisipe nan boule kay ? Non

**Le 7<sup>e</sup> accusé a répondu se nommer** : Smith Bajon, âgé de 31 ans, électricien de profession né aux Irois , demeurant à l'Anse d'Hainault

En substance il a interrogé comme suit :

Majistra : Mwen pa konnen anyen de afè dife a, se Anz Deno mwen abite



Mwen arete le 4 fevriye 2010, Anz Deno pa Lapolis

**Le 8<sup>e</sup> accusé a répondu se nommer** Mercurieu Jean Pierre, âgé de 64 ans, cultivateur de profession né aux Irois y demeurant et domicilié.

En substance il a interrogé comme suit :

Majistra : Mwen gen 2 moun nan pati OPL la ki di mwen te nan dife a, Majistra mwen pa konnen anyen nan afè dife sa a , kay Mesye Raymond ap koule li pa envite'w , mwen fè jounen nan travay li a, nan evènman sa a mwen pa konn anyen ditou . Mwen te sot nan mache, mwen tande yo arete Doudou , Tirenord , lèm rive nan wout mwen jwenn UDMO ki mete men sou depi lè a mwen la. Sa fèm preske 4 tran nanprizon.

**Le Conseil de la défense a questionné l'accusé par le biais du tribunal**

- Avan mwen pran pwizon se nan sèl OPL mwen te ye ankò.
- Lè yo te mare Destone Lebon kote ou te ye? Li pat wèw
- Kote ou te ye lè dife a te pran nan Iwa? Jou a mwen pat menm dòmi lakay, mwen te fè yon pa chat.
- Eske sa fè ou mal ? Wi majistra
- Eske moun OPL vin wè'w nan prizon an ? Non
- Ou gen relasyon ak manm MODERE? Mwen di bonjou nan lari
- Poukisa yo mete'w nan moun ki boule kay yo ? Mwen pa konnen pou kisa; mwen pa janm gen kont ak yo youn

**Le 9<sup>e</sup> accusé a répondu se nommer** : Bell Benissoit Conte, âgé de 45 ans, cultivateur de profession né aux Irois (3<sup>e</sup> section Matador) y demeurant et domicilié.

En substance il a interrogé comme suit :

Majistra : Jou sa a mwen fè nuit nan dèyè do madanm mwen ki te gen tranche , se an demen mwen tande afè dife , mwen pa konn anyen nan afè dife. Jou a madanm mwen akouche a 4trè di maten.

**Ministère public**

- Akize ki patisipasyon ou nan zak sa ? Majistra mwen te sou kabann lakay mwen

**Le 10<sup>e</sup> accusé a répondu se nommer** : Ysmé France , âgé de 27 ans, écolier de profession né aux Irois y demeurant et domicilié.

En substance il a interrogé comme suit :

Majistra : Mwen pa konn anyen nan dosye a

**Ministère Public**

- Ki patisipasyon ou nan afè dife a? Majistra mwen pa konn anyen nan afè a
- Ki rezon ki fè ou t'al rann tèt ou lajistis ? Majistra genyen yon kò dèye a, siw pa avè yo ou kont yo, se pou rezon sa a.

**Le Conseil de la défense**

Mande li pou nou majistra s'il nan yon pati politik ? Wi majistra se modere

- Nan pati politik ou ye a ou konn denonse zak sa yo ? Wi

**Le 11<sup>e</sup> accusé a répondu se nommer** Bell Jean Louis, âgé de 29 ans, cultivateur de profession né aux Irois (3<sup>e</sup> section Matador) y demeurant et domicilié.

En substance il a interrogé comme suit :

Majistra : Pandan mwen andeyò , mwen tande yo di yon Majistra mouri ,mwen te konnen se Morose Viliena, mwen pa konnen anyen nan afè dife , mwen al dèyè majistra pou fè konsta pou mwen , epi li arete'm. Li di se patizan Monroe mwen ye fòk li arete'm.

#### **Ministère public**

- Majistra mwen te ale Ma rouj 28 oktòb ,mwen retounen le 29 oktòb , mwen pat tande moun pale de anyen kip ase Iwa.

**Le 12<sup>e</sup> accusé a répondu se nommer** Kelleman Charles , âgé de 35 ans, pecheur de profession né aux Irois (3<sup>e</sup> section Divino) y demeurant et domicilié.

En substance il a interrogé comme suit :

Majistra : An 2009 , Gaspard fè arete'm ak kò brigad , mwen pa konnen anyen nan afè dife , mwen preske 4tran nan prizon , jij pa janm tande'm .

#### **Ministère Public**

Mwen arete le 23 desanm 2009 , yo voye'm isit depi lè sa jij pa janm tande'm.

#### **Le Conseil de la défense a interrogé l'accusé par le biais du tribunal**

- Kisa ou gen ak moun kif è arete'w yo ? Mwen pa gen anyen avèk yo , se afè politik.
- Ou te nan mete dife nan kay Iwa? Non

Une suspension est requise par le tribunal, l'audition des parties étant épuisée. Le juge en siège a déclaré débats particuliers sont fermés et les débats généraux sont déclarés ouverts.

#### **Le Ministère public a la parole**

**Me Aujour Jean Luc** est le premier qui a pris la parole, a exposé les moyens dont il entend se servir, la justice c'est la loi mère . Le crime d'incendie reproché à ces 12 accusés ici présent nous les avons entendus, le tribunal va prononcer sur le sort selon le crime d'incendie, les plaignants et les témoins se contredisent, ils compliquent la situation. Ce pareil acte va être réprimé. L'incendie a causé beaucoup de tort dans la communauté Iroisienne, art 22 Constitution haïtienne :Toute personne a droit à un logement ; Art 1<sup>er</sup> Droit de l'homme qui parle de la fraternité . Nous sommes à l'ère de l'Etat de droit. Votre conscience doit être interpellé, vue à ce acte barbare.

**Me Antoine Rosny Saint Louis** Le Ministère public a demandé au tribunal d'engager la république en rendant une décision équitable. Dans ce procès qui a été nous lie, l'essentielle n'a jamais révélé. La justice ne vit de scandale, elle meurt (Etzer-Vilaire) dans la nuit du 29 au 30 octobre 2009, un feu a été mis dans les maisons iroisiennes pour des raisons politiques nous avons punir un tel comportement. Il reviendra au tribunal de dire le mot du droit.

#### **Éléments constitutifs (4)**

- 1- L'acte lui-même / Matériel →un bien appartenant à autrui.
- 2- Le moyen → par le fait d'une substance explosive → La Gazoline
- 3- Intention criminelle / la volonté , selon la doctrine l'incendie est considéré ...
- 4- Element legale de l'infraction ( Pas de peine sans loi).-

Le Ministère public, renonce contre l'accusation contre Mercurieu Jn Pierre et Vileme Duclona, ils ont déjà passé 4 ans en prison, bénéficieront-ils les circonstances atténuantes? revient au tribunal, a demandé d'appliquer l'article 356 du C.P contre les accusés. Pour ceux qui sont en fuite, le Ministère public demande au tribunal de les juger par contumace.

#### LA PARTIE CIVILE

A la parole, **Me Ariel Chery** est le premier a pris la parole, 36 maisons ont été incendiées, l'oeuvre des douze incendiaires. C'est à bon droit que le Ministère public a fait la réquisition de cet article.

**Me Antoine Michelet Sanon** : Nous sommes victimes, nos maisons sont complètement incendiées nous sommes ça et là. Comment vous allez donner la peine? heureusement le législateur a tout bien planifié, nous avons entendu une pléiade de témoins. Dans ce cas vous allez rendre une décision équitable.

**Me Jean Michel** : a développé ses moyens pour dire que, Irois c'est une zone de non droit comme le cité soleil d'autrefois, Magistrat vous allez trancher selon votre conviction en faveur des victimes.

**Me Yvon Janvier** : Si les hommes de bien ont assez de courage pour faire face....le monde est perdu.

La mort de Odfort est un prétexte pour que les accusés arrivent à faire cette situation : Violation de droits humains art 276-2 l'a si bien dit (Constitution haïtienne).

**Me Mercier Josma** : a développé ses Moyens a déclaré que personne ne reconnaît pas leur participation dans cette incendie. Mercurieu a été dénoncé d'avoir brûlé la maison de Jean Renold Noel a demandé solidairement à 800,000 gourdes pour chaque en tôle, 1,500,000 gourdes pour chaque maison en béton à 2,000,000 de gourdes de Dommages –Intérêts.

#### LE CONSEIL DE LA DEFENSE A LA PAROLE

**Me Osnel Sejour** est le premier qui a pris la parole, a déclaré avec beaucoup d'intérêt qu'il a suivi le fait. L'alternance politique est totalement prescrit par notre Constitution; An 2009, il y a eu là pas un incendie regrettable. On a émis un lot de 200 mandats, 150 personnes ont pris la fuite (Ceux qui se sentaient fautifs) mais les accusés ici présent ne savent pas qui à faire à personne, ils se sont sentis confortable de rester chez eux.

Trois témoins d'entre eux disaient que Marc-Arthur Conte était en train de faire de la musique ce soir là. Le Ministère Public selon ce qu'il a entendu voir qu'il ya des intègres parmi eux, c'est une question de la politique pour que les messieurs ne sont plus. « Même si je suis homme, je ne vis pas de l'humain » (Theran). ,

Marc-Arthur jusqu'à présent, il est fort aux Irois. Je prend le soin de demander à un témoin est ce qu'il n'existe pas un autre Marc-Arthur là bas, il a répondu par l'affirmation; il y a doute, sur ce, il ya une certaine circonstance atténuante?

**Me Jean Fedy Charles** : Le Ministère a déclaré que la Politique tue le Droit, c'est vrai aujourd'hui vous vous trouvez devant une situation complexe, le I qu'on se trouve dans l'incendie se trouve dans Irois, divin, vilain, dedin. Art 52-1 de la Constitution montre comment... le but de la peine c'est de réhabiliter les personnes fautifs, accidentellement, ce événement c'est produit dans votre décision, permettre ces accusés de retrouver leurs familles parce qu'ils sont père de familles.

Me Roosevelt Charles : Il ya une situation socio-politico , les temoins qui sont deposes ici sont de Case 17-cv-10477-ADB Document 14-1 Filed 09/28/22 Page 193 of 572  
civile a renforcé le renoncement du Ministère Public contre les accusés Mercurieu Jn Pierre et Vilème Duclona , nous le félicitons, il ya une procédure pour juger par contumace, le Ministère Public doit decerner le mandat d'arrêt contre les fuillards .Où sont-ils ?Le Ministère public a frappé la mauvaise porte.

**Me Joseph Descharles** : Nous avons en face d'un procès complexe, où une trentaine de maisonnettes fit incendiées par qui? La commune des Irois nous appartiennent aussi, construire une maison ça coute beaucoup on peut pas le tolérer, mais la justice c'est pas la politique nous traine par devant la justice. En tenant de tous ces paramètres dans ce cas, vous allez rendre une décision qui ne sera pas cassable. Ils sont tous des présumés innocents, ils ne sont pas des voyous, ils sont des personnes comme nous, la partie civile les identifie comme des voyoux.

Le Ministère public, les identifie comme des individus, dans ce cas on peut chercher les vrais auteurs, le tribunal ne peut pas faire foi aux déclarations des témoins qui font la partir des parties politique, le Ministère public , la parti civile , reconnaissent qu'il y a du doute, les 2 premiers témoins disaient que Març-Arthur Conte était à la veillée . Le Ministère Public a reconnu que l'essentiel n'a pas été dit. Qui a brulé? Où les avaient prisent la main dans le sac ? Le doute profite à l'accusé. Ils sont tous innocents. Le législateur de 1835 l'a si bien dit, l'Etat d'esprit de l'intention des incendiaires. Les incendiaires rodent encore le département ; le Ministère Public me donne un cadeau en or, Merci Ministère public, sur les circonstances attenantes ? « M'vle'l , m'pran'l » ; ils ne sont pas coupables, en cas de rejet par impossible, donne les circonstances attenantes contre ceux qu'il n'a pas mis hors des liens de la prévention.

Pour allouer des dommages-intérêts... l'un des plaignants a déclaré qu'il a reçu une subvention de l'Etat. Dans ce cas, le conseil de la défense a demandé au tribunal d'appliquer l'article 383 alinéas 4. Dans le cas contraire donne trois ans aux accusés et même la peine inférieure, ce sera justice.

Le tribunal a demandé le dépôt des pièces pour se prononcer dans le délai légal. Séance tenante.

### **DROIT :**

Les accusés Marc-Athur CONTE, Lissage Viliena, Michelet NOEL, Lifaité LIVERS, Ebert SAINTELUS, Vilème DUCLONA, Smith BAJON, Mercurieu JEAN-PIERRE, Bel BENISSOIT, France IZME, Bel JEAN-LOUIS, Kelleman CHARLES, ont-ils commis le crime d'incendie aux préjudices de Madame Glossel LIGONDE; André Marc Vilssaint; Madame Gérard CHARLES; Madame Antoine Kesnel; Thelismène PIERRE-LOUIS; Jean Noel Gislaine; Louis Frederick; Petit Blanc Denis; Delicia Pierre-Louis; Raymond Jean Noel; Vanite Logis; Izmé Mary; Madame Canès Jean-Pierre; Destone Lebon; Celeste Zamor; Madame Jean Daniel Laguerre; Lissage Matyre; Lebon Macula; Boniface David; Maurice Auguste; Julio Auguste; Jean-Pierre Venita; William Julien; Andrel Dorval; Madame Samuel Michel; Izmé Gaspard; Lorena Wilbert; Flobert Milord; François Renold; Madame Paul Desrosiers; Izmé Jude; Romelus Moïse; Madame Sansarick Mardy; Marie Monique Noel?

Si oui, ne tombent-ils pas sous les rigueurs du code pénal ?

Pendant, y a-t-il des circonstances atténuantes en faveur des accusés, si oui, le tribunal ne tranchera-t-il pas selon ces dites circonstances ?

Quoi dire des dommages – intérêts demandés ? Et des valeurs réclamées comme prix estimatif des maisons brulées ?

Quid des dépens ?

- Vu au dossier de la cause, les pièces de la procédure

- Vu les conclusions de la partie civile
- Vu les conclusions du conseil de la défense
- Vu les dispositions de la loi en la matière
- Tout vu et après examen
- Considérant que par l'arrêt ordonnance en date du onze octobre deux mille douze et de la citation en date du vingt quatre juillet deux mille treize , les nommés Marc-Athur et Co. Ont été appelés à la barre du tribunal criminel de Jérémie sous l'accusation de crime d'incendie de maisons aux préjudices de Madame Glossel LIGONDE et Co.
- Considérant que les accusés ont nié les faits qui leur sont reprochés ;
- Considérant que selon les dépositions des témoins reçues au cours de l'instruction, les faits portés à la charge des accusés sont prouvés ;
- Considérant qu'ainsi les accusés tombent sous les rigueurs du code pénal ;
- Considérant que, cependant, ce drame a eu lieu à l'occasion de la mort d'un certain Odfort BAJON un proche des accusés ;
- Considérant que, ces. accusés attribuaient le décès D'Odfort BAJON d'une maladie surnaturelle provenant des victimes de l'incendie ;
- Considérant que, les accusés pouvaient ne pas se posséder en pleurant d'Odfort BAJON qu'il est était cher ;
- Considérant que, par conséquent, il y a lieu de leurs accordés les circonstances atténuantes ;
- Considérant qu'ainsi les accusés tombent sous les rigueurs de l'article 382, 2<sup>ème</sup> alinéa du code pénal qui stipule.

« Si la peine est celle de travaux forcés à perpétuité, le tribunal appliquera celle des travaux forcés à temps ou celle de la réclusion »

- Considérant que les victimes ont souffert atrocement dans leur âme à la vue de leurs maisons qui disparaissaient dans les flammes ou brisé à coups de pierres, de marteau ou de max ;
- Considérant qu'elles ont du dormir à la belle étoile, après la disparition de leurs maisons ;
- Considérant par conséquent, les dites maisons leurs seront payées à leurs juste prix ;
- Considérant que les victimes ont souffert des préjudices réels qui méritent réparations ;
- Considérant que les dommages qu'elles demandent sont de droit et qu'ils leurs seront alloués ;
- Considérant que toute partie qui succombe doit supporter les depens.

### PAR CES MOTIFS

Le Tribunal condamne les accusés : Marc-Athur Conte ; Lissage Viliena ; Michelet Noel ; Lifaitelivers ; Saintius Ebert ; Vilème Duclona ; Smith Bajon ; Mercurieu Jean-Pierre ; Benissoit Bell ; France Izmé ; Jean Louis Bell ; Charles Kelleman à trois ans de travaux forcés au terme de l'article 382, 2<sup>ème</sup> alinéa du code pénal, lu à l'audience inséré dans le jugement ; les condamne solidairement à payer 100,000 gourdes pour les maisons en tôle, brulées ou brisées et 500,000 gourdes pour les maisons en béton brulées ou brisées, les condamne solidairement à 1,000,000 (un million) de gourdes dommages-intérêts aux profits des victimes Madame Glossel LIGONDE ; André Marc Vilssaint ; Madame Gérard CHARLES ; Madame Antoine Kesnel ; Thelismène PIERRE-LOUIS ; Jean Noel Gislaine ; Louis Frederick ; Petit Blanc Denis ; Delicia Pierre-Louis ; Raymond Jean Noel ; Vanite Logis ; Izmé Mary ; Madame Canès Jean-Pierre ; Madame Destone Lebon ; Celeste Zamor ; Madame Jean Daniel Laguerre ; Lissage Matyre ; Lebon Macula ; Boniface David ; Maurice Auguste ; Julio Auguste ; Jean-Pierre Venita ; William Julien ; Andrel Dorval ; Izmé Gaspard ; Lorena Wilbert ; Flobert Milord ; François Renold ; Madame Paul Desrosiers ; Izmé Jude ; Romelus Moïse ; Madame Sansarick Mardy ; Marie Monique Noel et les condamne aux frais et depens, declare que la loi de lespinasse sera appliquée en faveur des accusés, dit que les accusés en fuite seront jugés par contumace.

Ainsi jugé et prononcé par nous Me Jean Baptiste LUISS JEAN Avocat, Juge, assistée du Greffier Jean Serge EUGENE et de l'huissier audiencier Osna Jean Petit. En présence de Me Rosny SAINT-LOUIS, Commissaire du Gouvernement, Officier du ministère public, en audience publique et criminelle du mardi treize Août deux mille treize, à 6 heures de l'après midi, An 210<sup>ème</sup> de l'Indépendance.

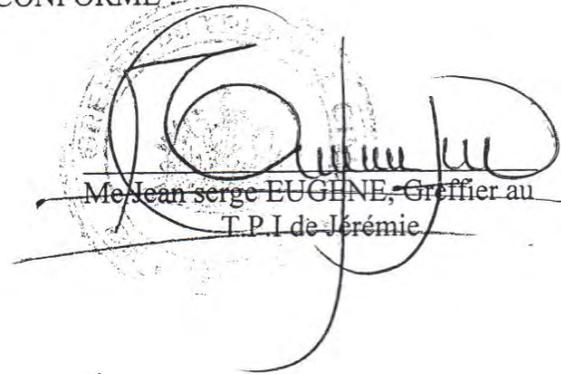
Il est ordonné à tous huissiers sur ce requis de mettre le présent jugement à exécution, aux officiers publics près les Tribunaux civils d'y tenir la main, à tous commandants ou autres agents de la force public d'y prêter main forte, lorsqu'ils en seront légalement requis.

En foi de quoi, la minute du présent jugement a été signée du Juge et du Greffier.

Ainsi signé : Me Jean Baptiste LUISS JEAN, Av, Juge au Tribunal Civil de Jérémie et de Jean Serge EUGÈNE, Greffier.

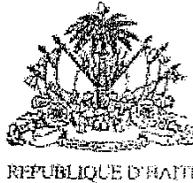
COLLATIONNÉE

POUR EXPEDITION CONFORME :



Me Jean Serge EUGÈNE, Greffier au  
T.P.I de Jérémie

Judgment (Ct. Cass. May 24, 2012) (French original) [Plaintiffs\_0000100-01]



LIBERTE

EGALITE

FRATERNITE



Extrait des minutes du greffe de

De la Cour de Cassation

## AU NOM DE LA REPUBLIQUE

La Cour de Cassation, deuxième section, a rendu l'arrêt :

Sur le pourvoi des citoyens Lifaité Livert, propriétaire, demeurant et domicilié à Galette, localité dépendant de la Commune des Irois Mones Dorcenat, propriétaire demeurant à Port-au-Prince et domicilié aux Irois, Louines Charles propriétaires, demeurant et domicilié aux Irois, Lissage Viliena, propriétaire, demeurant et domicilié à l'Anse d'Hainault Michelet Noel, propriétaire, demeurant et domicilié aux Irois, tous actuellement détenus à la prison civile de Jérémie ayant pour avocats constitués Mes Jonas Revange et Me Joseph Descharles, tous deux avocats du Barreau de Jérémie, identifiés, patentés et imposés pour le présent exercice respectivement aux numéros : 008-159-289-0 ; A-20934-95, A-08541 ; 001-153-681-5 ; 1990518-A, 1990522-A avec élection de domicile en leur Cabinet sis à la rue Caracolie, Jérémie #020

En cassation d'un jugement du Tribunal Criminel de Jérémie en date du vingt cinq octobre deux mille dix siégeant sans assistance de jury rendu entre les sus-cités et le Ministère Public agissant au nom de la vindicte publique.

Oui, à l'audience du mardi vingt deux mai deux mille douze les parties n'ayant pas été représentées à la barre le Substitut Gilbaud Robert en la lecture du Réquisitoire de son collègue Joseph Emmanuel Saint-Amour tendant à la nullité du verdict et à sa Cassation.

Vu 1°) la déclaration de pourvoi en date du 28 octobre 2010, 2°) la requête des pourvoyants, 3°) une expédition du jugement du Tribunal Criminel de Jérémie 4°) le réquisitoire du Ministère Public

Et, après délibération en Chambre du Conseil conformément à la loi.

Les sieurs Louinès Charles, Jean Louis Belle Lissage Viliena, Michelet Noel, Mones Dorcenat, Lifaité Livert, Jean Morose Viliena accusés d'assassinat, de complicité d'assassinat sur la personne de Boniface Eclésiaste, de destruction de bien public au préjudice de la communauté des Irois, de coups et blessures par balles sur Jude Isemé et Nissage Martyr ont été accusés par le Tribunal Criminel de Jérémie siégeant sans assistance de jury lequel a rendu à la date du vingt cinq octobre deux mille dix le jugement au dispositif suivant : « Par ces motifs, le Tribunal, après avoir délibéré déclare que les accusés 1°) Lifaité Livert âgé de 37 ans, demeurant et domicilié à Galette, localité dépendant des Irois 2°) Louinès Dorcenat, demeurant et domicilié à Port-au-Prince et domicilié aux Irois 3°) Louinès Charles âgé de 32 ans demeurant et domicilié aux Irois 4°) Jean Louis Belle âgé de 24 ans né à Mathador, cultivateur de profession, localité dépendant des Irois 5°) Michelet Noel, âgé de 29 ans, né aux Irois cultivateur 6°) Lissage Viliena âgé de 66 ans né à la quatrième section de l'Anse d'Hainaut, sont coupables de complicité d'assassinat sur la personne de Boniface Eclésiaste, de destruction de bien public au préjudice de la communauté des Irois, de coups et blessures par balle sur Judens Ismé et Nissage Martyr crime prévu et puni par les articles 44, 45, 241, 254, et suivants ; 358 du Code Pénal ; en conséquence les condamne chacun à 9 ans de travaux forcés et conformément aux articles 19, 44, 45, 241, 254, 358, et 232 du Code Pénal, lesquels articles ont été lus à haute voix par le Juge en siège : les condamne solidairement à six cent cinquante mille gourdes de dommages intérêts au profit de la partie civile, valeur qui sera répartie comme suit : 250.000 gourdes à David Boniface, 250.000 gourdes à Nissage Martyr et 150.000 gourdes à





Louison Ismé et faisant application des articles 36, 37, 39 du Code Pénal les condamne solidairement aux frais et dépens envers l'Etat, allouer au greffe la somme de \_\_\_\_\_ en ce non compris le coût du procès en jugement, dit qu'en cas de non paiement des dommages-intérêts et frais sus parlés les condamnés subiront une peine d'une année de prison; quant aux fuyards, la procédure par contumace sera déclenchée contre eux et ce, conformément à la loi pour que de tels actes ne se reproduisent parce que nuisibles à la société. »

Contre ce jugement les condamnés sus cités se sont pourvus en cassation par déclaration faite au greffe du Tribunal de Première Instance de Jérémie le vingt-huit octobre deux mille dix et pour le faire ils ont proposé trois moyens, le premier pris de violation des articles 269, 274 du Code d'Instruction Criminelle et des arts. 44, 45 de Code Pénal, le deuxième pris d'excès de pouvoir, le troisième pris d'excès par fausse application des articles 44 et 45, 252, 358, 19 du Code Pénal.

La Cour d'office

ATTENDU QUE les pourvoyant jugés et condamnés par le Tribunal Criminel de Jérémie siégeant sans assistance de jury ont exercé un pourvoi en cassation.

ATTENDU QUE dans le dossier qu'ils ont soumis à la Cour ne figure pas le procès-verbal de l'audience où l'affaire a été entendue et évacuée.

ATTENDU QU'il est stipulé à l'article 304 du C.I.C que le greffier dressera un procès-verbal de la séance à l'effet de constater que les formalités prescrites ont été observées. Il ne sera fait mention au procès-verbal ni des questions, ni des réponses des accusés, ni du contenu aux dispositions sans préjudice toutefois de l'article 252 concernant les changements, variations et contradictions dans la déclaration des témoins. Le défaut du procès-verbal en cas de condamnation, entrainera la nullité du jugement, sans préjudice d'une amende de cent gourdes au plus contre le greffier.

ATTENDU QU'il y a lieu de faire application de l'article susdit.

PAR CES MOTIFS, la Cour, sur les conclusions en partie conformes du Ministère Public, annule le jugement en Tribunal Criminel de Jérémie siégeant sans assistance de jury en date du vingt-cinq octobre deux mille dix rendu entre les sieurs Lifaite Livert, Monès Dorcenat, Louines Charles, Lissage Viliéna, Michelet Noel et le Ministère Public, renvoie la cause et les parties par devant le Tribunal Criminel des Cayes sans assistance de jury pour y être fait ce que de droit, les sieurs Lifaite Livert, Monès Dorcenat, Louines Charles, Lissage Viliéna, Michelet Noel en état de prise de corps, condamne le greffier du siège à cent gourdes d'amende.

Ainsi jugé et prononcé par nous, Jules Cantave, Vice-président, Antoine Norgaisse, Henri Michel Augustin, Joseph Mécène Jean Louis, Kesner Michel Thermési Juges en audience ordinaire et publique de jeudi vingt quatre mai deux mille douze en présence de Me. Joseph Emmanuel Sasint-Amour Substitut du Commissaire du Gouvernement près cette Cour et avec l'assistance du citoyen Jean Fritz Satiné, greffier du siège.

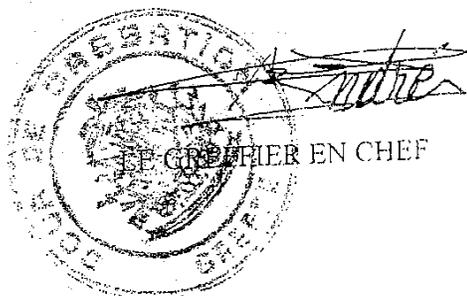
Il est ordonné à tous huissiers, sur ce requis, de mettre le présent arrêt à exécution; aux officiers du Ministère Public près les Tribunaux civils d'y tenir la main; à tous commandants et autres officiers de la force publique d'y prêter main forte, lorsqu'ils en seront légalement requis.

En foi de quoi, la minute du présent arrêt est signée du vice-président, des juges et du greffier susdits.

Ainsi signé : Jules Cantave, Antoine Norgaisse, Henri Michel Augustin, Joseph Mécène Jean Louis, Kesner Michel Thermési, Jean Fritz Satiné

POUR EXPEDITION CONFORME

COLLATIONNEE



Judgment (Ct. Cass. May 24, 2012) (English translations) [VIL0026-27, VIL0040-41]

# 8

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REPÚBLIC OF HAITI

LIBERTY EQUALITY FRATERNITY



Extract of the records of the registry  
of the Court of Cassation

IN THE NAME OF THE REPUBLIC

The Court of Cassation, second section, handed down the order:

On the appeal of the citizens Lifaité Livert, landowner, residing and domiciled in Galette, a dependent location in the town of Irois, Monès Dorcenat, a landowner residing in Port-au-Prince and domiciled in Irois, Louines Charles, landowner residing and domiciled in Irois, Lissage Viliéna, landowner residing and domiciled in Anse-d'hainault, Michelet Noel, landowner residing and domiciled in Irois, all currently held in the Jérémie civil prison, having the attorneys Jonas Revange, Esq. and Joseph Descharles, Esq., both attorneys in the Jérémie Bar, with the respective bar identification numbers: 008-159-289-0; A-20934-95, A-08541; 001-153-681-5; 1990518-A. 1990522-A, which elected domicile at their Office located at rue Caracolite, Jérémie #020.

Reversing a judgment of the Criminal Court of Jérémie dated October twenty-five, two thousand ten, without jury assistance rendered between the aforementioned and the Public Prosecutor's Office acting in vindication of society.

Hearing, at the hearing on Tuesday, May twenty-two, two thousand twelve, the parties not represented at the bar, deputy Gilbert Robert in the reading of the address of his colleague Joseph Emmanuel Saint-Amour tending toward voiding the verdict and its appeal.

Whereas 1°) the declaration of appeal dated October 28, 2010 2°) the petition of the appealing parties 3°) a duplicate of the judgment of the Criminal Court of Jérémie 4°) the address of the Public Prosecutor's Office.

And, after deliberation in Judge's Chambers in accordance with the law

Louines Charles, Jean Louis Bell, Lissage Viliéna, Michelet Noel, Monès Dorcenat, Lifaité Livert, Jean Morose Viliéna accused of murder, aiding and abetting the murder of Boniface Boolésiaste, destruction of public property to the detriment of the town of Irois, of blows to and firearm injuries to Jude Isémé and Nissage Martyr, were accused by the Criminal Court of Jérémie without jury assistance, which handed down on October twenty-five, two thousand ten, the judgment in the following operative words: "For these reasons - the Court, after having deliberated, declares that the defendants 1) Lifaité Livert, age 37, residing and domiciled in Galette, a dependent location in Irois; 2) Monès Dorcenat, residing and domiciled in Port-au-Prince and domiciled in Irois; 3) Louines Charles, age 32, residing and domiciled in Irois; 4) Jean Louis Bell, age 24, born in Mathador, a farmer, a dependent location of Irois; 5) Michelet Noel, age 29, born in Irois, a farmer; 6) Lissage Viliéna, age 66, born in the fourth section of Anse-d'hainault are guilty of aiding and abetting the murder of Boniface Boolésiaste, are guilty of aiding and abetting destruction of public property to the detriment of the town of Irois, of blows to and firearm injuries to Jude Isémé and Nissage Martyr, a crime set forth and punishable by Articles 44, 45, 241 and 254 et seq. of the Criminal Code. Consequently, it sentences them each to nine years of hard labor and in accordance with Articles 19; 44, 45, 241, 254, 358 and 232 of the Criminal Code. The articles were read aloud by the judge [who] ordered them jointly to six hundred and fifty thousand gourdes in damages for the civil party, an amount which shall be divided as follows: 250,000 gourdes to David Boniface; 250,000 gourdes to Nissage Martyr; 150,000 gourdes to



Anyone who makes private use of this form shall be subject to a fine of one hundred gourdes. (Law of June 6, 1919)

*Juders Iseme, and in application of articles 36, 37, 39 of the Criminal Code, ordered them jointly to pay the costs to the State, allocated to the registrar in the amount of which does not include the cost of the judgment, and if the damages and costs above are not paid, the convicted parties [illegible] one year of prison. As for the fugitives, in absentia proceedings shall be initiated against them, and this in accordance with law so that such acts are not repeated because they are harmful to society."*

Against this judgment, the aforementioned convicted parties brought an appeal through a declaration to the registrar of the Court of First Instance of Jérémie on October twenty-eight, two thousand ten, and to do so, they offered three arguments, the first taken was violation of Articles 269, 274 of the Code of Criminal Procedure and Articles 44, 45 of the Criminal Code, the second taken was abuse of power, the third taken was abuse through the wrong application of Articles 44 and 45, 252, 358, 19 of the Criminal Code.

The Court of its own motion

WHEREAS the appealing parties judged and sentenced by the Criminal Court of Jérémie without jury assistance brought an appeal on points of law.

WHEREAS the file that they submitted to the Court does not have the statement from the hearing where the matter was heard and discharged.

WHEREAS it is stipulated in Article 304 of the C.J.C. that the registrar shall prepare minutes of the session in order to certify that the prescribed formalities were observed. No mention shall be made in the minutes of the questions or responses of the accused, or the content of the provisions without prejudice however to Article 252 on changes, variation and contradictions in the statement of the witnesses. The absence of minutes, in the case of conviction, shall lead to voided judgment, without prejudice to a maximum fine of one hundred gourdes of the registrar.

WHEREAS it is necessary to apply the aforementioned article.

FOR THESE REASONS, the Court, on the conclusions, in part correct, of the Public Prosecutor's Office, it voids the judgment of the Criminal Court of Jérémie without jury assistance dated October twenty-five, two thousand ten handed down for Lifaite Livert, Monès Dorcenat, Louines Charles, Lissage Viliéna, Michelet Noel and the Public Prosecutor's Office, sends the case and parties to the Criminal Court of Cayes without jury assistance so that justice may be done; Lifaite Livert, Monès Dorcenat, Louines Charles, Lissage Viliéna, Michelet Noel, are detained for trial, and it orders the registrar to pay a fine of one hundred gourdes.

It is therefore judged and pronounced by us, Jules Cantave, Vice President, Antoine Norgaisse, Henri Michel Augustin, Joseph Mécène Jean Louis, Kesner Michel Thermési, judges in ordinary and public hearings on Thursday, May twenty-fourth, two thousand twelve in the presence of Joseph Emmanuel Sasint-Amour, Esq. Deputy Government Commissioner with this Court and with the assistance of citizen Jean Fritz Satiné, registrar.

All bailiffs are ordered on this request to enforce this order; officers of the Public Prosecutor's Office with the Civil Courts are ordered to support it; all commanders and other agents of law enforcement are ordered to provide support when legally required.

In witness whereof, the official record of this order is signed by the aforementioned Vice President, judges and registrar.

So signed: Jules Cantave, Antoine Norgaisse, Henri Michel Augustin, Joseph Mécène Jean Louis, Kesner Michel Thermési, Jean Fritz Satiné.

FOR CERTIFIED EXECUTION COPY  
CHECKED

[signature]  
REGISTRAR

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COURT OF CASSATION

  
REGISTRAR



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REPUBLIC OF HAITI

LIBERTY EQUALITY FRATERNITY

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Louines Charles, Jean Louis Bell, Lissage Viliena, Michelet Noel, Mones Dorcenat, Lifaite Livert, Jean Morose Viliena accused of murder, aiding and abetting the murder of Boniface Ecclésiaste, destruction of public property to the detriment of the town of Irois, of blows to and firearm injuries to Jude Isemé and Nissage Martyr, were accused by the Criminal Court of Jérémie without jury assistance, which handed down on October twenty-five, two thousand ten, the judgment in the following operative words: "For these reasons - the Court, after having deliberated, declares that the defendants 1) Lifaite Livert, age 37, residing and domiciled in Galette, a dependent location in Irois; 2) Monès Dorcena, residing and domiciled in Port-au-Prince and domiciled in Irois; 3) Louines Charles, age 32, residing and domiciled in Irois; 4) Jean Louis Bell, age 24, born in Malhador, a farmer, a dependent location of Irois; 5) Michelet Noel, age 29, born in Irois, a farmer; 6) Lissage Viliena, age 66, born in the fourth section of Anse-d'hainault are guilty of aiding and abetting the murder of Boniface Ecclésiaste, are guilty of aiding and abetting destruction of public property to the detriment of the town of Irois, of blows to and firearm injuries to Judes Iseme and Nissage Martyr, a crime set forth and punishable by Articles 44, 45, 241 and 254 et seq. of the Criminal Code. Consequently, it sentences them each to nine years of hard labor and in accordance with Articles 19; 44, 45, 241, 254, 358 and 232 of the Criminal Code. The articles were read aloud by the judge [who] ordered them jointly to six hundred and fifty thousand gourdes in damages for the civil party, an amount which shall be divided as follows: 250,000 gourdes to David Boniface; 250,000 gourdes to Nissage Martyr; 150,000 gourdes to

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It is therefore judged and pronounced by us, Jules Cantave, Vice President, Antoine Norgaïsse, Henri Michel Augustin, Joseph Mécène Jean Louis, Kesner Michel Thermési, judges in ordinary and public hearings on Thursday, May twenty-fourth, two thousand twelve in the presence of Joseph Emmanuel Sasint-Amour, Esq. Deputy Government Commissioner with this Court and with the assistance of citizen Jean Fritz Satiné, registrar.

All bailiffs are ordered on this request to enforce this order; officers of the Public Prosecutor's Office with the Civil Courts are ordered to support it; all commanders and other agents of law enforcement are ordered to provide support when legally required.

In witness whereof, the official record of this order is signed by the aforementioned Vice President, judges and registrar.

So signed: Jules Cantave, Antoine Norgaïsse, Henri Michel Augustin, Joseph Mécène Jean Louis, Kesner Michel Thermési, Jean Fritz Satiné.

FOR CERTIFIED EXECUTION COPY  
CHECKED

[signature]  
REGISTRAR

[round stamp:]  
COURT OF CASSATION



REGISTRAR

Judgment (Ct. First Instance Gonaïves Nov. 16, 2000)



REPUBLIC OF HAITI )  
CITY OF PORT AU PRINCE )  
EMBASSY OF THE UNITED ) SS:  
STATES OF AMERICA )

*I, Dennis P. Williams, Vice-Consul, of the United States of America at Port-au-Prince, Haiti, duly commissioned and qualified, do hereby certify that Bocchit Edmond, whose signature and official seal appear on the attached document was on the 10th day of January 2001, Second Assistant to Max Morpeau, Director of Judicial Affairs, Ministry of Foreign Affairs in Port-au-Prince, Haiti.*

*For the contents of the annexed document, I assume no responsibility.*

*In witness whereof, I have hereunto set my hand and affixed the seal of the Embassy of the United States of America at Port-au-Prince, Haiti on this 17th day of January 2001.*



---

*Dennis P. Williams  
Vice-Consul  
Of the United States of America*

Liberté

Egalité  
République d'Haiti

Fraternité

Extrait "Plumitif d'Audience Criminelle du jeudi 16 Novembre 2000.

AU NOM DE LA REPUBLIQUE

Le Tribunal de Première Instance des Gonaïves compétemment réuni au Palais de Justice de cette ville, a rendu en audience publique et en ses attributions criminelles, le jugement suivant:

Entre

Le Ministère Public représenté par le Commissaire du Gouvernement, Me Frénot Cajuste, assisté de ses substituts: Me Rocky Pierre et Me Louiselmé Joseph <sup>suivant</sup> au Nom de la Vindictte publique de Contumace de: Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval, Hébert Valmond, Martial Romulus, Frantz Douby, Ernst Prud'Homme, Jean-Robert Gabriel, Joseph Michel François, Bellony Groshomme, Reynald Timo, Estimé Estimable, Anatin O. Voltaire, Michel-Ange Ménard, Luc Roger Asmath, Ledix Dessources, Walner Phanord, Madsen Saint-Val, Roméus Walmyr, Tony Fleurival, Carlo Noé alias Tiblanc, Pierre Piloge Oriol, Emmanuel Constant, Louis Jodel Chamblain, Armand Sajous dit Ti-Armand, Wilbert Morisseau, Brutus ainsi connu, Chéry ainsi connu, Koukou ainsi connu, Ti Sonson ainsi connu, Pierre Paul Camille, Pierre André Présumé, Douze ainsi connu, Raphael Camille, Achou ainsi connu et Jacob Jean-Paul.

Vu l'Ordonnance de Renvoi en date du 30 Août 1999.

Vu l'Ordonnance de Notification aux accusés en date du 4 Octobre 2000.

Vu les procès-verbaux devant constater l'affichage de l'Ordonnance de domicile aux différentes Justices de Paix notamment aux Gonaïves, Port-au-Prince, Port-de-Paix, Cabaret, Anse-à-Galet.

Oui: le Réquisitoire oral du Ministère Public, les conclusions de la partie civile.

Attendu que par Ordonnance en date du 30 Août 1999, ordonnance à laquelle est insérée la prise de corps des accusés, Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval et consorts; Attendu que l'Ordonnance de prise de corps n'a pas été exécutée, vue que les recherches effectuées par la Police et la Justice sont infructueuses et introuvables;

Attendu que le Tribunal siégeant avec l'Assistance de Jury en date du 04 octobre 2000 a accordé un délai de 10 jours pour présenter au Tribunal, délai qui n'a pas été respecté.

Attendu que toutes les formalités légales ont été régulièrement remplies.

Attendu que: Une personne accusée d'une infraction quelconque qui a été en fuite ne peut retarder de suspendre de la loi pénale;

Attendu que les 37 accusés: Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval, Hébert Valmond, Martial Romulus, Frantz Douby, Ernst Prud'Homme, Jean-Robert Gabriel, Joseph Michel François, Bellony Groshomme, Reynald Timo, Estimé Estimable, Anatin O. Voltaire, Michel-Ange Ménard, Luc Roger Asmath, Ledix Dessources, Walner Phanor, Madsen Saint-Val, Roméus Walmyr, Tony Fleurival, Carlo Noe alias Tiblanc, Pierre Piloge Oriol, Emmanuel Constant, Louis Jodel Chamblain, Armand Sajous dit Ti-Armand, Wilbert Morisseau, Brutus ainsi connu, Chéry ainsi connu, Koukou ainsi connu, Ti Sonson ainsi connu, Pierre Paul Camille, Pierre André Présumé, Douze ainsi connu, Raphael

*Extrait*

Camille, Achou ainsi connu et Jacob Jean-Paul sont en fuite.

Attendu que Raoul Cédras, Ex-Général et consorts sont accusés d'assassinats, de complicité d'assassinats;

Attendu que le crime d'assassinat est prévu et puni par les articles 241 et 247 du Code Pénal;

Attendu que l'article 241 du Code Pénal stipule "tout meurtre commis avec préméditation ou guet-apens est qualifié d'assassinat";

Attendu que l'auteur intellectuel, matériel et ou complice d'une infraction, une fois constante devra punir de la même peine;

Attendu que les CONTUMAX sont accusés du crime d'assassinat et de la complicité d'assassinat;

Attendu que le Coupable du crime d'assassinat parricide, infanticide sera condamné aux travaux forcés à perpétuité, Article 247 du Code Pénal;

Attendu que les Contumax ont commis des préjudices moraux contre les victimes du Massacre de Raboteau; Attendu que les articles 1168-1169 du Code Civil Haïtien stipulent: Art 1168 "Tout fait quelconque de l'homme qui cause à autrui un dommage oblige celui par la faute duquel il est arrivé à le réparer";

Attendu que les préjudices causés aux victimes de Raboteau sont des préjudices moraux et en fonction de ces préjudices, les victimes doivent bénéficier nécessairement réparation civile et proportionnelle aux préjudices subis.

Par ces motifs:

Le tribunal, au Réquisitoire conforme du Ministère Public

1o-Condamne: Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval, Hébert Valmond, Martial Romulus, Frantz Douby, Ernst Prud'homme, Jean-Robert Gabriel, Joseph Michel François, Bellony Groshomme, Reynald Timo, Estimé Estimable, Anatin O. Voltaire, Michel-Ange Ménard, Luc Roger Asmath, Ledix Dessources, Walner Phanord, Madsen Saint-Val, Roméus Walmyr, Tony Fleurival, Carlo Noé alias Tiblanc, Pierre Piloge Oriol, Emmanuel Constant, Louis Jodel Chamblain, Armand Sajous dit Ti-Armand, Wilbert Morisseau, Brutus ainsi connu, Chéry ainsi connu, Koukou ainsi connu, Ti Sonson ainsi connu, Pierre Paul Camille, Pierre André Présumé, Douze ainsi connu, Raphael Camille, Achou ainsi connu et Jacob Jean-Paul, de travaux forcés à perpétuité.

2o-Les condamne solidairement à UN (1) MILLIARD DE GOURDES en faveur des victimes de Massacre de Raboteau.

3o-Les condamne en outre aux Amendes et aux frais envers l'Etat.

4o-Dit que les biens des condamnés de Contumace seront à partir de l'Exécution du jugement considérés comme des biens d'absents et à partir de là ils seront séquestrés et le compte du séquestre sera rendu aux victimes et à l'Etat haïtien.

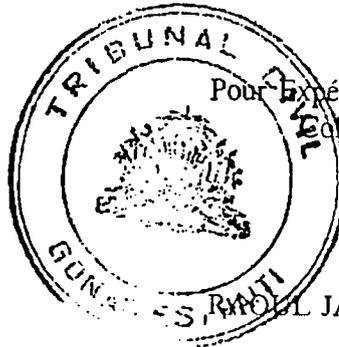
5o-Dit que le jugement sera exécuté à la diligence du Commissaire du Gouvernement.

Ainsi rendu par Nous, Me Napela Saintil, Doyen du Tribunal Criminel siégeant sans Assistance de Jury, en présence de Ministère Public, Me Frénot Cajuste, Me Rocky Pierre et Me Louiselmé Joseph, respectivement Commissaire et Substituts du Commissaire du Gouvernement de ce ressort,

de la partie civile représentée par Me Mario Joseph et Me Duclas Marcelin, et avec l'assistance du Citoyen RAOUL JACQUES, Greffier du siège.

Il est ordonné à tous huissiers sur ce requis de mettre le présent jugement à exécution aux Officiers du Ministère Public près les Tribunaux Civils d'y tenir la main à tous Commandants et autres Officiers de la force publique d'y prêter main forte lorsqu'ils en seront légalement requis.

En foi de quoi la minute du présent jugement est signée du Doyen et du Greffier sus-dits.



Pour Expédition Conforme  
Collationnée

RAOUL JACQUES, GREFFIER EN CHEF

Vu pour la légalisation de la signature du greffier

Me Napela Saintil, Avocat  
Doyen du Tribunal de Première Instance  
Gonaïves

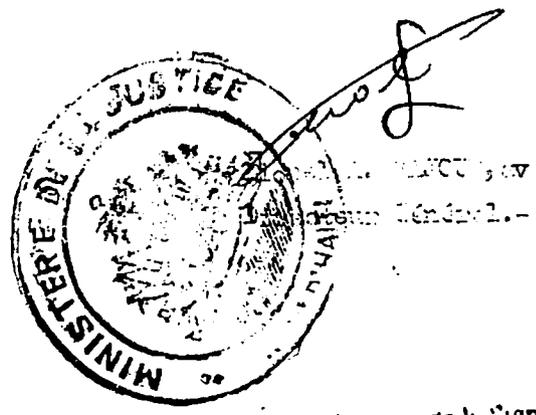


Vu pour la légalisation de la signature du Doyen du  
Tribunal de Première Instance des Gonaïves

Me Lionel Sajous, Avocat  
Directeur Général du Ministère de la Justice  
et de la Sécurité Publique



Vu Pour la Légalisation de la Signature de M<sup>r</sup> Habela Saintil  
 Doyen du tribunal Civil de Gonaïves  
 Apposé Au Recto de la 3<sup>o</sup> page Enregistrée  
 Au Ministère de la justice le 19 Décembre 2000  
 An 199 de L'indépendance au No. 4967  
 Du Registre à ce Destine A  
 Récepissé No. Taxonere



Vu Pour la légalisation de la signature  
 de M<sup>r</sup> Lionel A. Sayers  
 Directeur Général du Ministère de la Justice  
 Apposé ci-dessus... Courtoisie  
 Enregistré au No. 19494  
 Ministère des Affaires  
 Port au Prince le 10 Janvier 2008  
 M<sup>r</sup> MORPHEU  
 Directeur des Affaires Juridiques

Translation 0030

Liberty

Equality  
Republic of Haiti

Fraternity

Extract: "Minutes of Criminal Hearing, Thursday, November 16, 2000.

IN THE NAME OF THE REPUBLIC

The Court of First Instance of Gonaïves duly held in the Court of Law of this city, has rendered the following judgment at the public hearing and within its criminal jurisdiction:

Between

The Department of the Public Prosecutor, represented by the Commissioner of the Government, Frénot Cajuste, Esq., aided by his assistant public prosecutors: Rocky Pierre, Esq. and Louiselmé Joseph, Esq., complying in the Name of Prosecution *in absentia* of: Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval, Hébert Valmond, Martial Romulus, Frantz Douby, Ernst Prud'Homme, Jean-Robert Gabriel, Joseph Michel François, Bellony Groshomme, Reynald Timo, Estimé Estimable, Anatin O. Voltaire, Michel-Ange Ménard, Luc Roger Asmath, Ledix Dessources, Walner Phanord, Madsen Saint-Val, Roméus Walmyr, Tony Fleurival, Carlo Noé alias Tiblanc, Pierre Piloge Oriol, Emmanuel Constant, Louis Jodel Chamblain, Armand Sajous also known as Ti-Armand, Wilbert Morisseau, the individual known as Brutus, the individual known as Chéry, the individual known as Koukou, the individual known as Ti Sonson, Pierre Paul Camille, Pierre André Prémumé, the individual known as Douze, Raphael Camille, the individual known as Achou, and Jacob Jean-Paul.

In view of the Committal for Trial dated August 30, 1999.

In view of the Order of Service to the accused dated October 4, 2000.

In view of the report establishing the posting of the Order of Domicile to various Justices of the Peace, in particular at Gonaïves, Port-au-Prince, Port-de-Paix, Cabaret, Anse-à-Galet.

The Public Prosecutor's charge having been heard, as well as the plaintiff's action for damages.

WHEREAS by Order dated August 30, 1999, to which order is added the arrest of the accused, Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval and their accomplices;

WHEREAS the Order of Arrest has not been executed, since the searches carried out by the Police and the Law are fruitless and the whereabouts of the accused are unknown;

WHEREAS the Court, having sat along with the Jury on October 4, 2000, has allowed an extension of 10 days to show up in Court, an extension which has not been respected;

WHEREAS all legal formalities have been duly met;

WHEREAS a person accused of any offense, who has been on the run, may not delay or postpone the criminal law;

WHEREAS the 37 accused: Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval, Hébert Valmond, Martial Romulus, Frantz Douby, Ernst Prud'Homme, Jean-Robert Gabriel, Joseph michel François, Bellony Groshomme, Reynald Timo, Estimé Estimable, Anatin O. Voltaire, Michel-Ange Ménard, Luc Roger Asmath, Ledix Dessources, Walner Phanord, Madsen Saint-Val, Roméus Walmyr, Tony Ficurival, Carlo Noé alias Tiblanc, Pierre Piloge Oriol, Emmanuel Constant, Louis Jodel Chamblain, Armand Sajous also known as Ti-Armand, Wilbert Morisseau, the individual known as Brutus, the individual known as Chéry, the individual known as Koukou, the individual known as Ti Sonson, Pierre Paul Camille, Pierre André Présumé, the individual known as Douze, Raphael Camille, the individual known as Achou, and Jacob Jean-Paul are on the run.

WHEREAS Raoul Cédras, Ex-General, and his accomplices are accused of assassinations and of complicity in assassinations;

WHEREAS the crime of assassination is provided for and punished by Articles 241 and 247 of the Penal Code;

WHEREAS Article 241 of the Penal Code stipulates that "all murder committed with premeditation or with felonious intent is classified as assassination";

WHEREAS the ringleader, perpetrator and accomplice of an offence, once that offense is established, should receive the same penalty;

WHEREAS the DEFAULTERS are accused of the crime of assassination and of complicity in assassination;

WHEREAS the person guilty of the crime of parricide or infanticide shall be sentenced to penal servitude for life, Article 247 of the Penal Code;

WHEREAS the Defaulters have inflicted mental distress on the victims of the Raboteau Massacre;

WHEREAS Articles 1168-1169 of the Haitian Civil Code stipulate: Article 1168 "Any and all acts of a person which cause injury to another, obligate said perpetrator to redress the injury."

WHEREAS the injuries caused to the Raboteau victims are of mental distress and according to these injuries, the victims should necessarily be granted civil redress proportionate to the injuries suffered.

On these grounds:

The Court, in the Prosecutor's Charge in conformance with the Department of the Public Prosecutor

1<sup>st</sup> - Sentences: Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval, Hébert Valmond, Martial Romulus, Frantz Douby, Ernst Prud'Homme, Jean-Robert Gabriel, Joseph michel François, Bellony Groshomme, Reynald Timo, Estimé Estimable, Anatin O. Voltaire, Michel-Ange Ménard, Luc Roger Asmath, Ledix

Dessources, Walner Phanord, Madsen Saint-Val, Roméus Walmyr, Tony Fleurival, Carlo Noé alias Tiblanc, Pierre Piloge Oriol, Emmanuel Constant, Louis Jodel Chamblain, Armand Sajous also known as Ti-Armand, Wilbert Morisseau, the individual known as Brutus, the individual known as Chéry, the individual known as Koukou, the individual known as Ti Sonson, Pierre Paul Camille, Pierre André Prémumé, the individual known as Douze, Raphael Camille, the individual known as Achou, and Jacob Jean-Paul to penal servitude for life.

2<sup>nd</sup> - Orders them to pay jointly and severally ONE (1) BILLION GOURDES to the victims of the Raboteau Massacre.

3<sup>rd</sup> - Further orders them to pay fines and costs to the State.

4<sup>th</sup> - States that the property of the Accused, Sentenced *in absentia*, from the date of the Rendering of the Judgment, shall be considered to be the property of the absentees, and from that date on shall be sequestered and the account of the sequestration of goods shall be handed over to the victims and the Haitian State.

5<sup>th</sup> - States that the judgment shall be rendered at the behest of the Commissioner of the Government.

So rendered by Us, Napela Saintil, Esq., Doyen of the Criminal Court sitting without the Jury, in the presence of the Public Prosecutor's Office as represented by attorneys Frénot Cajuste, Rocky Pierre and Louiselmé Joseph, respectively, Commissioner and Assistant Public Prosecutors of the Commissioner of the Government of his jurisdiction, of the plaintiff claiming damages represented by Atty. Mario Joseph and Atty. Duclas Marcelin, and with the assistance of Citizen RAOUL JACQUES, Clerk of the Court.

All process servers are ordered by this document to give this judgment to the Officers of the Public Prosecutor's Department at the Civil Courts to assist all Commanders and other Officers of the police force and to lend a hand when legally required.

In witness whereof, the record of this judgment is signed by the aforementioned Doyen and Clerk of the Court.

[seal of Civil Court, Gonaïves, Haiti]  
For Copy Duly Compared

RAOUL JACQUES, SENIOR CLERK [illegible signature]

Having witnessed the authentication of the signature of the Clerk of the Court

Napela Saintil, Esq., Attorney at Law  
Doyen of the Court of First Instance



Gonaïves [illegible signature] [seal of Civil Court, Gonaïves, Haiti]

Having witnessed the authentication of the signature of the Doyen of the Court of First Instance of the Gonaïves

Lionel Sajous, Esq., Attorney at Law  
Director General of the Department of Justice  
And Public Safety

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Having witnessed the certification of the Signature of Napela Saintil, Esq.,  
Doyen of the Civil Court of Gonaïves  
Affixed to the back of the 3<sup>rd</sup> page. Recorded  
at the Department of Justice on December 19, 2000,  
197<sup>th</sup> year of the Independence, at No. 4967  
of the appropriate Registry A,  
Receipt No. [illegible]

[Department of Justice, Republic of Haiti seal]  
Lionel A. Sajous, Esq., Director General [illeg. Signature]

I, VIVIANE HADDAD, certified that I am competent to translate this document, and that the translation is true and accurate, to the best of my abilities.

Viviane Haddad 1/31/01  
(Translator) (Date)

U. S. IMMIGRATION AND NATURALIZATION SERVICE  
26 FEDERAL PLAZA, NEW YORK, NY 10278

THE ABOVE TRANSLATION FROM THE French  
LANGUAGE WAS MADE BY THE UNDERSTAND.

Viviane Haddad 1/31/01  
(INTERPRETER) (DATE)

Judgment, No. 15/00002 (Ct. First Instance Les Cayes July 21, 2015) (Exhibit C to Declaration of Mario Joseph, Attorney, *Boniface v. Viliena*, 338 F. Supp. 3d 50 (D. Mass. 2018), Dkt. 20-1)



STATE OF NEW YORK )  
)  
)  
COUNTY OF NEW YORK ) ss

**CERTIFICATION**

This is to certify that the attached translation is to the best of my knowledge and belief a true and accurate translation from French into English of the attached July 2015 Judgement.

Edward J. Jacob  
Divergent Language Solutions, LLC

State of New York  
County of New York  
Subscribed to and sworn before me this 11<sup>th</sup> day of April, 2017,  
by Edward J. Jacob.

Notary Public

**MATTHEW C. ZELAK**  
**NOTARY PUBLIC, State of New York**  
No. 01ZE8350239  
Qualified in New York County  
Commission Expires November 7, 2020



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[revenue stamp:]



REPUBLIC OF HAITI



LIBERTY

EQUALITY

FRATERNITY

EXCERPT FROM THE ORIGINAL DOCUMENTS OF THE OFFICE OF THE COURT CLERK OF THE LES CAYES COURT OF FIRST INSTANCE

IN THE NAME OF THE REPUBLIC

Judgment

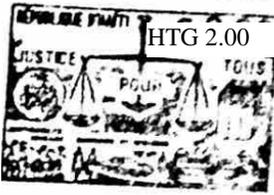
The Les Cayes Court of First Instance sitting in the Courthouse (Palais de Justice) of this city, at 5 Rue du Quai, rendered, in a public hearing and with its criminal powers without the presence of a jury, the following judgment between:

- 1) The Office of the Public Prosecutor, represented by Mr. Wilnoce SANON, Deputy Public Prosecutor of the Government at the Les Cayes Court of First Instance, acting on behalf of the vindication of society and as the representative of the company, Party of the First Part;
2) The Complainants:
a) David BONIFACE, brother of the victim Ecclésiaste BONIFACE, an adult, a Teacher, residing and domiciled for service of process in Les Irois;
b) Juders ISME, a victim who lost his right eye, on April 8, 2008, an adult, a rhetoric student, residing and domiciled for service of process in Les Irois;
c) Nissage MATRY, a victim who lost his right leg on April 8, 2008, an adult, residing and domiciled for service of process in Les Irois;

And

- 3) The defendants
a) Léonel LIVERT alias "Lifaite," 45 years old, born in Les Irois and residing and domiciled for service of process there, a farmer, currently detained in the Les Cayes civil prison;
b) Jean Louis BELLE, 30 years old, born in Matador third section of Les Irois, residing there and domiciled there for service of process, a farmer and stock breeder, currently detained in the Les Cayes Civil Prison;
c) Monès DORCENAT, alias Antoine, 35 years old, born in Les Irois, residing in Port-au-Prince, and domiciled for service of process in Les Irois, a mason by occupation, currently detained in the Les Cayes Civil Prison;
d) Lissage VILIENA, 71 years old, born in the fourth section of the municipality of Anse d'Hainault residing and domiciled for service of process in Les Irois, a farmer, currently detained in the Les Cayes Civil Prison;
e) Louinès CHARLES, alias "Kèleman," 37 years old, born in Les Irois and residing and domiciled for service of process there, currently detained in the Les Cayes civil prison;
f) As well as the other defendants: Jean Morose VILIENA, Méritus BEAUBLANC, Duclona VILIENA, Kenson MARTYR, Pierrot BOILEAU, Guerson PIERRE, France ISEME, Gardy JEAN PIERRE, Angel JEAN, Esto BELLE, Cedernier FLEURIME, Michele NOEL, all , years old, adults, fugitives, residing and domiciled for service of process in Les Irois;

[revenue stamp:]



### POINTS OF FACT

On July 27, 2007, the Mayor of Les Irois Jean Morose **VILIENA** at the head of a group of armed individuals swore on everything that is sacred to sow terror in Les Irois, shouting: “[unintelligible] closed door,” and then they moved from words to actions by assassinating the victim Ecclésiaste **BONIFACE** that day, by shooting him in the head and stoning him.

On April 8, 2008, those same individuals pillaged “La Nouvelle Radio” in Les Irois. Nissage Martyr, owner of the house where the radio station was located, was shot and injured in his right leg, which was amputated because of said wounds.

Juders **ISEME**, a young schoolboy who was at the radio station, was hit with a bullet in his right eye, causing him to be blind.

On April 15, 2008, Nissage **MARTYR** filed a complaint against Jean Morose **VILIENA** and his privates for destruction of his house and an attack on his life.

On April 16, 2008, the managers of a Les Irois organization named “**TADI**,” in a letter filing a complaint, asked the Office of the Public Prosecutor in Jérémie to initiate criminal prosecution of Jean Morose **Viliena** and his privates for Destruction of “**RADIO NOUVELLE**” at the expense of the Community of Les Irois, and the Assassination of Ecclésiaste **BONIFACE**.

On April 16, 2008, the Jérémie Public Prosecutor of the Government, in its Bill of Indictment to its Investigating Office, asked the Investigating Judge to investigate the acts alleged in its Bill of Indictment, i.e.: the Assassination of Ecclésiaste **BONIFACE**, the destruction of “Radio Nouvelle,” shots and gunshot wounds caused to the persons of Nissage **MATRY** and Juders **ISEME**.

At the end of the investigation of the case, the Investigating Judge rendered its order of closure dated January [illegible], 2010, remanding Jean Morose **VILIENA** and his privates to appear in the Jérémie Criminal Court, ruling without the participation of a jury; All were charged with “assassination and a conspiracy to assassinate Ecclésiaste **BONIFACE**; shooting of and gunshot wounds caused to Juders **ISEME** and Nissage **MATRY**; and destruction of public property at the expense of the Community of Les Irois.

The Jérémie Court of First Instance, ruling using its powers with regard to criminal law and without the presence of a jury, in the hearing held on Monday, October twenty-fifth, two thousand ten, convicted the defendants 1) Lifait **LIVET**, 2) Dorcenat **MONES**, 3) Louinès **CHARLES**, 4) Jean Louis **BELLE**, 5) Michelet **NOEL**, and 6) Lissage **VILIENA**

To nine (9) years of forced labor since they were found guilty of: conspiracy to assassinate Ecclésiaste **BONOFICE**, destruction of public property at the expense of the Community of Les Irois, and of shooting of and gunshot wounds caused to Juders **ISEME** and Nissage **MATRY**.

Unhappy with the judgment of the Jérémie Criminal Court (*Cour d’Assises*), these convicted individuals lodged an appeal to the Court of Cassation to have the judgment of the Jérémie Criminal Court dated October 25, 2010, ruling without the presence of a jury overturned.

After deliberation in chambers, the Court of Cassation rendered its decision on Thursday, May 24, 2012 (May twenty-fourth two thousand twelve) ordering the judgment of the Jérémie Criminal Court null and void for breach of Article 304 of the Code of Criminal Investigation (*Code Instruction Criminel*), considering that the court clerk neglected to prepare the transcript of the session, and finding that the formalities required by the law were respected, remanded the case and the parties to the Les Cayes Criminal Court without the presence of a jury to have justice served.

At the hearing in a criminal case without the presence of a jury held at the Les Cayes Courthouse on Friday, July [cut off], 2015, the court recorded under docket no. 15/0002 was called and selected by the Office of the Public Prosecutor, represented by Mr. Wilnoce SANON, Deputy Public Prosecutor of the Government at said Court.

By the decision of the Court of Cassation, the decision to remand of the Investigating Judge and the Bill of Indictment, the case was remanded to the Office of the Public Prosecutor at the Les Cayes Criminal Court without the presence of a jury.

The Senior Member of the Criminal Court, Magistrate Bénit **NOEL**, instructing the Court Clerk to note in the hearing record that the defendants must appear in court free and accompanied only by policemen to prevent them from escaping. Then the Senior Member of the Criminal Court ruling without the presence of a jury moved on to the identification of the defendants who indicated their: Surname, Given Name, Age, Occupation, Domicile for Service of Process, Residence, and birthplace. After the identification of them, the Senior Member of the Criminal Court formally acknowledged to the counsel of the defendants and the

party seeking civil damages who had requested it, and warned the counsel of the defendant that he cannot say anything against his conscience or against the respect due to the laws and that he had to express himself with decency and moderation.

The Senior Member of the Court then warned the defendants to be very attentive to what they were going to hear. After that warning, the Court ordered the Court Clerk to read the "Decision of the Court of Cassation, the order of remand, and the Bill of Indictment of the Office of the Public Prosecutor. Once that was done, the Senior Member of the Court explained to the defendants the content of said documents, read by the Court Clerk, and saying to them: "Those are the accusations made against you; you are going to hear the charges that will be produced against you. Then, the Office of the Public Prosecutor, represented by Mr. Wilnonce **SANON**, Deputy Public Prosecutor of the Government, presented the exposition of the case and showed the circumstances under which the offenses of which the defendants were accused were perpetrated.

After noting the absence of the defendants who were fugitives at the hearing held that day, the Office of the Public Prosecutor asked the Criminal Court to apply against them Article 179 of the Code of Criminal Investigation, which refers to Article 360 of the Code of Criminal Investigation. The Senior Member of the Criminal Court sitting without the presence of a Jury, Magistrate Benit **NOEL**, pursuant to said articles, rendered the order stipulated by the provisions of Article 366 of the Code of Criminal Investigation regarding proceedings conducted in absentia. Then the Office of the Public Prosecutor presented the list of the complainants as well as that of the witnesses. The witnesses were called three times out loud by the sitting Court Clerk being ordered to do so by the Senior Member of the Criminal Court.

The Court moved on to conduct the hearing of the complainants:

- 1) David **BONIFACE**, 34 years old, born in Les Irois, and residing and domiciled for process of service there, a teacher; 2) Juders **ISEME**, 28 years old, born in Les Irois, and residing and domiciled for service of process there, a student; 3) Nissage **MARTYR**, 55 years old, born in Les Irois, and residing and domiciled for service of process there, a merchant;
- 2) Said complainants and parties seeking civil damages were lawfully heard by the Criminal Court sitting without the presence of a jury. They were then questioned by the Senior Member of the Criminal Court, the Office of the Public Prosecutor, the counsel for the party seeking civil damages, and the counsel for the defendants via the Senior Member of the Criminal Court.



After the hearing of the complainants, the persons summoned in advance as witnesses by the Office of the Public Prosecutor were heard for information purposes, considering the fact that the Prosecutor of the Government did not serve the list of the witnesses to the defendants within the legally stipulated time limit.

The individuals providing information:

- 1) Laguerre Jean **DENIS**, 55 years old, born in Saint Jean du Sud, residing and domiciled for service of process in Les Irois, a teacher;
  - 2) Franckel **ISEME**, 44 years old, born in Les Irois and residing and domiciled for service of process there, a farmer;
  - 3) Mersy **ISEME**, 54 years old, born in Les Irois and residing and domiciled for service of process there, a fisherman;
  - 4) Rodné Marc **LEBON**, 28 years old, born in Les Irois and residing and domiciled for service of process there, a student;
- were heard by the Criminal Court and interrogated in turn by the Senior Member of the Court, the Office of the Public Prosecutor, the counsel for the party seeking civil damages, and the counsel for the defense. They all asserted to the Court that said defendants had committed the acts of which they were accused. Then the Senior Member of the Court presented the transcripts and all the other exhibits in the case file to the defendants, since the list of the witnesses had not been transmitted to the defendants. The hearing was suspended to be resumed on Monday, July 6, 2005.

The Criminal Court conducted the interrogation of the following defendants when the hearing was resumed on Monday, July 6, 2015:

- 1) The defendant Léonel **LIVERT** alias **LIFAITE** was interrogated by the Senior Member of the Criminal Court, the Office of the Public Prosecutor, the counsel for the party seeking civil damages, and the counsel for the defendant.
- 2) Then the Court moved on to the interrogation of the defendant Jean Louis **BELLE**, who collapsed with a medical crisis and lost consciousness. The Senior Member of the Court prepared the report of his observation and ordered him transported urgently to Hôpital Immaculée Conception des Cayes, and suspended the hearing to be resumed in one week, i.e., on Monday, July 13, 2015.

The hearing resumed, and the criminal court sitting without the presence of a jury continued the interrogation of the defendants:

- 3) Dorcena **MONES**, Lissage **VILIENA**, Leonel **LIVERT** alias Lifaite, Louines **CHARLES**, and Jean Louis **BELLE**, and then reinforced them with the complainants: David **BONIFACE**, Nissage **MATYR**, and Juders **ISEME** in turn. The complainants maintained all their statements, asserting that the five defendants present at the hearing participated in the perpetration of the offenses of which they were accused, and the complainant David **BONIFACE** stated that he had not personally seen Dorcena **MENES**, during the

the assassination of his brother Ecclésiaste, but did not deny his presence in the armed group of Jean Morose **VILIENA**.

However, the complainants remained consistent in their statements acknowledging that the five defendants present at the criminal hearing without the presence of a jury, held on Monday, July 13, 2015, encouraged Vilème **DUCLONA** to shoot at Nissage **MARTRY**, who lost his right leg, and on Juders **ISEME**, who lost his right eye, upon the orders of Jean Morose **VILIENA**, a defendant who is a fugitive. Moreover, it was that same armed group of Jean Morose **VILIENA** that shot Ecclésiaste by shooting him in the head on July 27, 2007 in Les Irois and by stoning him.

After the interrogation of the defendants, the Senior Member of the Criminal Court asked the court clerk to note in the docket that: "The defendants were the last to have the floor," declaring "the special proceedings closed" he ordered a suspension of the hearing for ten (10) minutes.

When the hearing resumed, the Senior Member of the Criminal Court declared that the general proceedings were opened and gave the floor to the Office of the Public Prosecutor, which had asked for it, and which supported its Bill of Indictment and concluded asking: "the Senior Member of the Criminal Court without the presence of a jury to find that the acts blamed on the defendants were established and to sentence: Leonel **LIVERT** alias Lifaite, Jean Louis **BELLE**, Monès **DORCENAT**; Lissage **VILIENA**; Louinès **CHARLES**, alias Kèleman, to seven years of forced labor, under the accusations of complicity in the assassination of Ecclésiaste **BONIFACE** dated July 27, 2007, destruction of public property at the expense of the Community of Les Irois, gunshots and wounds caused to the persons of Juders **ISEME** and of Nissage **MARTYR** on April eighth (8), 2008, pursuant to the provisions stipulated in Articles 2, 44, 45, 241, 358, and 254 et seq. of the Haitian Criminal Code (*Code Pénal*), without prejudice to the Law regarding preventive detention and in compliance with Articles 144, 45, 24, 254, 350, and 38[cut off] of the Haitian Criminal Code."

In addition, the counsel for the party seeking civil damages asked the Court, besides the penalty requested by the Office of the Public Prosecutor, to order the defendants to pay two billion Haitian *gourdes* (HTG 2,000,000,000) in liquidated damages to the party seeking civil damages, represented by David **BONIFACE**, Juders **ISEME**, and Nissage **MATYR**, in reparation for the harm caused to said complainants pursuant to Articles 1168 and 1169 of the Haitian Civil Code, Article 5 of the Inter-American Convention on Human Rights, and Article 7 of the International Covenant on Civil and Political Rights.

Finally, the Counsel for the defendants asked the court to release the five defendants present at the hearing held that day declaring them innocent, considering that the presumed perpetrators of the offenses blamed on them were on the run. To that effect, the Court must not consider them to be accomplices.

The Senior Member of the Criminal Court asked the court clerk to note in the hearing record that "the counsel for the defendants had been the last to have the floor" and declared the general proceedings closed.

**Thereupon, the court took the case under consideration in order to make a ruling within the legally stipulated time limit.**

### **THE COURT**

After analyzing the case file meticulously, both with regard to the form and with regard to the merits, ruled as follows:  
In consideration of the legal texts governing the subject matter, including, in particular:

Articles 2, 44, 45, 241, 254, et seq., and 382, 19, and 358 of the Haitian Criminal Code.

Articles 1168 and 1169 of the Haitian Civil Code regarding liquidated damages claimed by the party seeking civil damages via the counsel for the party seeking civil damages.

In consideration of the exhibits submitted in the case file recorded under number 15/0002, including:

- 1- Death certificate of Ecclésiaste **BONIFACE** dated July 27, 2007.
- 2- Report of the finding of the Les Irois Justice of the Peace dated April 9, 2008.
- 3- Two medical certificates regarding Juders **ISEME** dated April 21, 2008 and April 29, 2008.
- 4- Medical certificate regarding Nissage **MATYR** dated May 5, 2008.
- 5- Order for transmission dated May 23, 2008 for the purpose of the Bill of Indictment Bill of Indictment [sic] dated June 9, 2008.
- 6- Bill of Indictment for the purpose of the release of the detention warrant dated June 22, 2009.



- 7- Ex-parte motion of Morose **VILIENA**, Libelto **EDMOND**, Vilès **EDMOND**, and Sanite **COMTE** dated October 7, 2008.
- 8- Order for the purpose of the release of the detention warrant dated March 9, 2009.
- 9- Final Bill of Indictment of the Office of the Public Prosecutor with a certain date
  - 1) Order for remand of the Investigative Office remanding the defendants: Léonel **LIVERT** alias Lifaite, Jean Louis **BELLE**, Menés **DORCENAT** alias Antoine, Lissage **VILIENA**, Louines Kelcman **CHARLES**;
  - 2) Jean Morose **VILIENA**, Meritus **BEAUBLANC**, Duclona **VILIENA**, Kenson **MARTYR**, Pierrot **BOILEAU**, Guerson **PIERRE**, France **ISEME**, Gardy **JEAN PIERRE**, Ange **JEAN**, Esto **BELLE**, Cedernier **FLEURIME**, Michelet **NOEL** to appear in the criminal court sitting without the presence of a jury, dated January 25, 2010.  
Judgment of the Jérémie Criminal Court sentencing the defendants to 9 years of forced labor dated October 25, 2010.  
Decision of the Court of Cassation overturning the judgment of the Jérémie Criminal Court sitting without the presence of a jury remanding the case and the parties to the Les Cayes Criminal Court without the presence of a jury.

Bill of Indictment of the Office of the Public Prosecutor with a certain date.

In consideration of all the other exhibits submitted to the case file to be transcribed by the court clerk.

In consideration of the solemn opening of the Les Cayes Criminal Court sitting without the presence of a jury in a public hearing held at 5 Rue du Quai, on Friday, July 3, 2015, with the notation that the aforementioned defendants were appearing free and accompanied only by policemen to prevent them from escaping.

In consideration of the identification of said defendants followed by the warnings addressed to them by the Senior Member of the Court.

In consideration of the reading of the order of remand, of the Bill of Indictment, and of the Decision of the Court of Cassation by the Court Clerk.

In consideration for the reiteration to the defendants of the content of the Bill of Indictment, of the order of remand, and of the Decision of the Court of Cassation by the Senior Member of the Criminal Court sitting without the presence of a jury asking them to very attentive to what they would hear.

In consideration of the exposition regarding the Bill of Indictment by the Office of the Public Prosecutor and the submission of the list of witnesses to the Senior Member.

In consideration of the reading of the list of the witnesses by the court clerk.

In consideration of the intervention of the counsel for the defense requesting the Senior Member of the Court to set aside said witnesses, considering that the list of the witnesses had not been transmitted to the defendants within the legally stipulated time limit by the Office of the Public Prosecutor.

In consideration of the Senior Member of the Criminal Court to hear the persons summoned as witnesses by the Office of the Public Prosecutor, for information.

In consideration of the appeal of the complainants: David **BONIFACE**, Juders **ISEME**, and Nissage **MARTYR**;

In consideration of the witnesses testifying against and for the defendants.

In consideration of the interrogation of the defendants.

- 1) Léonel **LIVERT** alias Lifaite
- 2) Jean Louis **BELLE**
- 3) Monès **DORCENAT** alias Antoine
- 4) Lissage **VILIENA**
- 5) Louines **CHARLES** alias Kelèman

In consideration of the finding made by the court that the defendants were the last to have the floor.

In consideration of the closing of special proceedings and the opening of the general proceedings by the Senior Member of the Criminal Court sitting without the presence of a jury at the Les Cayes Courthouse.

In consideration of the support for the Bill of Indictment by the Office of the Public Prosecutor, represented by Mr. Wilnoce **SANON**, Deputy Prosecutor of the Government at the Les Cayes Court of First Instance after dictating his submissions.

In consideration of the intervention of the counsel for the party seeking civil damages.

In consideration of the replies of the counsel for the defense, who dictated his submissions.

In consideration of the intervention of the Senior Member of the Les Cayes Criminal Court sitting without the presence of a Jury, Magistrate Bénit **NOEL**, who asked the court clerk to note in the hearing record that “the counsel for the defense was the last to have the floor.” The Court then took the case into consideration to make a ruling within the legally stipulated time limit.

At today’s hearing, the Court rendered its decision on the basis of the following questionnaire that it established for itself:

### POINTS OF LAW

a) **With regard to the form:**

- 1) Does the Court have jurisdiction to hear this case?
- 2) Is the case admissible with regard to the form?

**With regard to the merits**

- 3) Must the application of the Office of the Public Prosecutor be granted or that of the counsel of the defendants?
- 4) Must the liquidated damages claimed by the counsel of the party seeking civil damages be granted?
- 5) What about the expenses and costs of the proceedings?

Whereas, on July 27, 207[sic], Jean Morose **VILIENA**, a fugitive, Mayor of Les Irois at the time and his armed group composed of: Léonel **LIVERT** alias **LIFAITE**, Jean Louis **BELLE**, Menés **DORCENAT** alias Antoine, Lissage **VILIENA**, Louines **CHARLES** alias **Kèleman**. Said five defendants were judged by the Les Cayes Criminal Court, on the one hand; on the other hand, the defendants who are fugitives -- Méritus **BEAUBLANC**, Duclona **VILIENA**, Kenson **MARTYR**, Pierrot **BOILEAU**, France **ISEME**, Gardy **JEAN PIERRE**, Guerson **PIERRE**, Angel **JEAN**, Esto **BELLE**, Cedernier **FLEURIME**, Michel **NOEL** – they had assassinated Ecclésiaste **BONIFACE** by shooting him in the head and stoning him;

Whereas, all the members of the group are accomplices in that assassination to Article 45 of the Haitian Criminal Code;

As a result, they are subject to punishment with the same penalty as the perpetrator conducting “Haute Fort Bajon” [cut off] as well as the intellectual perpetrator of said assassination of Jean Morose **VILIENA**

Whereas, assassination is a crime stipulated and punished by Article 241 in Haitian Criminal Code;

Whereas, on April 8, 2008, with Jean Morose **VILIENA**, mayor of Les Irois at the time who headed his armed group, composed of the aforementioned defendants, the latter pillaged the materiel of the “Radio **NOUVELLE**” of Les Irois and destroyed the house in which said radio station was located, causing, by means of these offenses, destruction of public property at the expense of the community of Les Irois as stipulated by Article 358 of the Haitian Criminal Code. They struck and wounded with gunshots the complainants Juders **ISME**, who lost his right eye, and **Nissage Martyr**, who lost his right leg, which was amputated because of said wounds – acts stipulated and punished by Articles 254 et seq. of the Haitian Criminal Code;

Whereas, the complainants identified the perpetrators – Jean Morose **VILIENA**, **DUCLONA Vileme**, as well as the other defendants present at today’s hearing and those who are fugitives as the accomplices in said offenses, since they, by machination and threats, incited “Vilème **DUCLONAT**” to shoot at **Nissage MATYR** and Juders **ISEME**, telling them “Jean Morose paid you to shoot the guy, shoot him.” Furthermore, they all fired shots at **Nissage MARTYR**. Said complainants have requested justice and reparations;

Whereas, the complainant David **BONIFACE** saw the defendants present at today’s hearing, as well as those who are fugitives before and after the assassination of his brother “Ecclésiaste **BONIFACE**.” Since they had constantly made death threats against him; and he requests justice and reparations;

Whereas, the statements of the complainants are consistent and corroborated by those of those who provided information heard by the Les Cayes Criminal Court within the context of this case;

Since those who provided information asserted to the Les Cayes Criminal Court that: Jean Morose **VILIENA** and the five defendants present at today’s hearing, as well as those who are fugitives, assassinated Ecclésiaste **BONIFACE**, destroyed and pillaged the “radio Nouvelle” station in Les Irois, fired on **Nissage MARTYR**, and destroyed his house in which the “radio Nouvelle” station was housed, fired upon Juders **ISEME** in broad daylight and in view of the inhabitants of Les Irois;

Whereas, at the criminal hearing held without the presence of a jury in Les Cayes, the defendants Léonel **LIVERT** alias **Lifaite**, Jean Louis **BELLE**, Monès **DORCENAT**, Lissage **VILIENA**, and Louinès **CHARLES** alias **Kèleman**, appeared free and accompanied only by policemen to prevent them from escaping. They were the last to have the floor during the

special proceedings and the counsel for the defense was the last to have the floor during the general proceedings, asking the criminal court to release the defendants;



Whereas, the defendants who are fugitives -- Jean Morose **VILIENA**, Meritus **BEAUBLANC**, Duclona **VILIENA**, Kenson **MARTYR**, Pierrot **BOILEAU**, Guerson **PIERRE**, France **ISME**, Gardy **JEAN PIERRE**, Angel **JEAN**, Esto **BELLE**, Cedernier **FLEURIME**, Michel **NOEL** – did not appear at the criminal hearing held without the presence of a jury today, and upon the request of the Office of the Public Prosecutor, represented by Wilnoce SANON, the Les Cayes Criminal Court applied against said defendants who are fugitives pursuant to Article 366 of the Haitian Code of Criminal Investigation [...] **de Menan PIERRE LOUIS** et seq.; since they are fugitives, they can be judged in absentia.

Whereas, the counsel for the party seeking civil damages has claimed two billion Haitian gourdes (HTG 2,000,000,000) in liquidated damages for the complainants;

Whereas, the defendants present in the Les Cayes Criminal Court at the hearing today have been judged on the charges of Assassination and Conspiracy to commit the assassination of Ecclesiaste **BONIFACE** on July 27, 2007, of destruction of public property at the expenses of the community of Les Irois on April 8, 2008, of gunshots against and wounding of Juders **ISME**, who lost his right eye, and of Nissage **MATYR**, whose right leg was amputated, on April 8, 2008;

Whereas, said offenses are stipulated and punished in Articles 44, 45, 241, 254 et seq., and 358 of the Haitian Criminal Code;

Whereas, the aforementioned articles must be applied;

Whereas, the Office of the Public Prosecutor, represented by Mr. Wilnoce SANON, has asked the Les Cayes Criminal Court to sentence said defendants to seven years of forced labor, without prejudice to the law regarding preventive detention pursuant to Articles 2, 44, 45, 241, 254 et seq., and 358 of the Haitian Criminal Code;

Whereas, the counsel for the defense, represented by Mr. Jean Youry **LEONARD**, Joseph **Georges**, and Maxon **ESTA**, have asked the Court to release said innocent persons, considering that the five defendants present at the hearing in the Criminal Court without the presence of a jury today cannot be considered to be accomplices in the offenses of which they are accused since the presumed perpetrators of such offenses are fugitives:

Whereas, the Court must accede to the submissions of the Office of the Public Prosecutor dictated in its oral argument in the hearing held in the Criminal Court without the presence of a jury, at the Les Cayes Courthouse at 5 Rue du Quai, on Monday, July 13, 2015;

WHEREFORE, The Court, on the basis of the conforming submissions of the Office of the Public Prosecutor, after deliberation, states that the prosecution instituted by the Office of the Public Prosecutor against the defendants present at the day's hearing and those who are fugitives falls within its jurisdiction, and is just and well founded and states that the defendants -- Léonel **LIVRET** alias LIFAITE, Jean Louis **BELLE**, Monès **DORCENA** alias ANTOINE, Lissage **VILIENA**, and Liones **CHARLES** alias Kèleman -- are guilty of Complicity in the Assassination of the person of Ecclesiaste **BONIFACE**, of the destruction of public property at the expense of the Community of Les Irois, of striking and injuring with gunfire Juders **ISEME** and Nissage **MARTYR**, crimes stipulated and punished by Articles 44, 45, 241, 254 et seq., and 358 of the Haitian Criminal Code. Therefore, sentences them to seven years of forced labor without prejudice to the law regarding preventive detention and in compliance with Articles 144, 45, 24, 254, 350, 382, and 19 of the Haitian Criminal Code, which articles have been read aloud by the Judge and read as follows:

ARTICLE 45. Persons shall be punished as accomplices of an action characterized as a crime or an offense: who, by means of a culpable gift, promise, threats, abuse of authority or of power, machinations, or items have caused said action or given instructions to commit it;

who have procured arms, instruments, or any other resources that were used for the action knowing that how it [sic] would be used;

Those who have knowingly aided or assisted the perpetrator or the perpetrators of the action, with regard to the acts that consummated it, without prejudice to the penalties that are specifically instituted by this code.

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**ARTICLE 241.** Any murder committed with premeditation or an ambush is characterized as an assassination;

**ARTICLE 254.** Any individual who has deliberately caused wounds or brought from Les Cayes [cut off] or committed any other violence or wrongful acts if from said types of violence an illness or a disability of more than twenty days shall be punished with a term in prison of one year to three years: -

If the acts of violence described above caused mutilation, amputation, or the deprivation of the use of a limb, blindness, the loss of an eye, or other permanent disabilities, the culprit shall be punished with imprisonment.

If the blows caused or the wounds inflicted deliberately but without the intention of causing death have, nevertheless, caused it, the culprit shall be punished with a term of forced labor.

**ARTICLE 19.** A sentence to punishment with a term of forced labor shall be ordered for at least three years, and no more than fifteen years.

Articles 382, 144, 24, and 350 et seq.....”



Orders them jointly and solidarily to pay three million Haitian gourdes in liquidated damages in reparation for the damages caused to the party seeking civil damages, pursuant to Articles 1168 and 1169 of the Haitian Civil Code, a value that shall be allocated as follows: one million one hundred thousand Haitian gourdes (HTG 1,100,000) to David **BONIFACE**; one million Haitian gourdes to Nissage **MARTYR**; and nine hundred thousand Haitian gourdes (HTG 900,000) to Juders **ISEME**, and pursuant to the Articles in the Haitian Criminal Code, orders them jointly and solidarily to pay the expenses and costs to the Government, allocates to the court clerk the sum of five thousand one hundred gourdes, including the cost of the judgment. As for the fugitives, the proceedings in absentia shall be initiated against them, in compliance with the law, to avoid repetition of such acts that are harmful to society.

**After said judgment was issued, the Senior Member of the Criminal Court ordered the reading by the court clerk of the transcript of the hearing, which was done.**

So ruled and ordered by me, Magistrate Bénit **NOEL**, Senior Member of the Les Cayes Criminal Court, in this public hearing, without the presence of a jury held on Tuesday, July twenty-first (21), 2015, in the presence of Mr. Wilnoce SANON, Deputy Public Prosecutor of the Government at said Court occupying the seat of the Office of the Public Prosecutor with the assistance of Mr. Kerven PIERRE VILLE, court clerk.

It is ordered that all process servers, upon this request, execute this judgment, and that the Officers of the Office of the Public Prosecutor at the Civil Courts to assist them, and that all Commanders and other Officers of the law enforcement authorities to lend assistance when it is legally requested of them.....

In witness whereof, the original of this judgment has been signed by the Senior Member of the Criminal Court, Magistrate Bénit **NOEL** and the aforementioned court clerk.....

So signed by: Bénit **NOEL**, Senior Member, and Mr. Kerven **PIERRE VILLE**, Court Clerk.....

COLLATED IN COMPLIANCE WITH THE ORIGINAL FOR A TRUE COPY ISSUED.....

[initials]

[signature]

for Kerven PIERRE VILLE  
Court Clerk

copy true to the original

[illegible stamp]

[initials]

2/5/16

ORIGINAL

[illegible stamp]

[signature]

In the year two thousand sixteen on Friday the fifth (5) of the month of February.

At the request of Messrs. David BONIFACE, Juders ISME, and Nissage MATYR, owners, residing and domiciled for service of process in the municipality of Les Irois, identified respectively with numbers: CIN 08-08-99-1981-01-00007, NIF: 009-729-867-2; CIN: 08-08-99-1960-05-00002, NIF: 007-547-195-31; CIN: 0-08-99-1987-02-00028, NIF: 009-729-872-1, who have as their appointed attorneys Maîtres Marin JOSEPH, Dicunel FLEURY JEAN, Wanique J. UMENE , Kesny LÉON, and Roosevelt LOUIS admitted to the Bar of Port-au-Prince., with the latter admitted to the Bar of Les Cayes, identified, licensed, and taxed respectively under Nos.: 003-129-800-7, 187-014-0-, 187-014-0102-27; 004-222-675-9,1-2756840, A-050631, 008-275-283-2, 007-649-735-5,....., with election of domicile for service or process at the office of their attorneys located at 67, Rue Toussaint LOUVERTURE, Les Cayes - Haiti, (W.I).

I, Pierre M. Shintil, process server of *The Court of Appeal* of Les Cayes, residing there and domiciled there for service of process, identified under No. 005-461-544-2, undersigned, have served, given, and left:

1. For the convict Léonel LIVERT alias “LIFAITE”, residing and domiciled for service of process in Les Irois, currently detained in the Les Cayes civil prison, where, being and speaking to [illegible], who received my copy and stamped my original, so declared;
2. For the convict Jean Louis BELLE, residing and domiciled for service of process in Les Irois, currently detained in the Les Cayes civil prison, where, being and speaking to Jean Louis Belle, who received my copy and stamped my original, so declared; [illegible]
3. For the convict Monès DORCENAT alias “Antoine”, residing and domiciled for service of process in Les Irois, currently detained in the Les Cayes civil prison, where, being and speaking to [illegible], who received my copy and stamped my original, so declared;
4. For the convict Lissage VILIENA, residing and domiciled for service of process in Les Irois, currently detained in the Les Cayes civil prison, where, being and speaking to Lissage Viliena, who received my copy and stamped my original, so declared;
5. For the convict Louisnés CHARLES alias “Kèleman”, residing and domiciled for service of process in Les Irois, currently detained in the Les Cayes civil prison, where, being and speaking to Louinés Charles, who received my copy and stamped my original, so declared;
6. For the Public Prosecutor of the government at the Les Cayes Court of First Instance, Mr. Raymond BERGEAUX, at his Office of the Public Prosecutor where I was transported and where, being and speaking to the person Mr. Jean Riballister, [illegible], so declared;

Received at the  
Office of the  
Public  
Prosecutor of  
Les Cayes on  
9/5/1 [illegible]  
[signature]

Copy of the standard enforceable first authentic copy of a judgment rendered by the Les Cayes Court of First Instance on the basis of its criminal law powers without the presence of a jury, on Tuesday, July twenty-first (21), two thousand fifteen (7/21/2015), stating and declaring that the persons named

[signature]

[signature]

[illegible stamp:] [signature]

Léonel LIVERT, Jean Louis BELLE, Monès DORCENAT, Lissage VILIEN, and Louinés CHARLES are recognized as guilty of conspiracy to assassinate Ecclésiaste BONIFACE; of destruction of public property at the expense of the community of Les Irois; and of the shooting and wounding with gunshots of Juders ISME and Nissage MARTYR. Therefore, the sentenced them to seven (7) years of forced labor. Said judgment is duly signed, sealed, and collated for all relevant legal purposes.

So that they are not unaware of it, I, being and speaking as stated, left a copy of this writ and of the aforementioned judgment for them. End of the document; the cost is HTG 1,000. I have affixed the special stamp required by law both to the original and to the copy.

[signature]

Process  
Server

[signature]  
2/5/[illegible]  
2006

2/6/16  
289  
[illegible]

[illegible stamp]  
11/19/15  
[signature]

*Original*

In the year two thousand fifteen on *Thursday, the nineteenth (19) of* .....November

At the request of the Office of the Public Prosecutor represented by Wilnorce SANON, attorney at law, Deputy Public Prosecutor of the Government at the Les Cayes Court of First Instance, identified under No.: 0010-213-590-9 at the Les Cayes Court of First Instance, acting in the name of the law and in the interest of society.

I, Osna Jean Petib[illegible], Process Server, registered on the registers of the Court Clerk of the Jérémie Court of First Instance, identified under No. 004-120-963-4, residing and domiciled for service of process in said city, undersigned, served, given and left:

- 1 – For Mr. Jean Morose VILLENA, owner, residing and domiciled for service of process in Les Irois, a fugitive, in his residence where being and speaking to [illegible], so declared;
- 2 – For Mr. Meritus BEAUBLANC alias Ti-Américain, residing and domiciled for service of process in Les Irois, a fugitive, in his residence where being and speaking to [illegible], so declared;
- 3 – For Mr. Vilème Duclona, owner, residing and domiciled for service of process in Les Irois, a fugitive, in his residence where being and speaking to [illegible], so declared;
- 4 – For Mr. Kenson MATHYR, owner, residing and domiciled for service of process in Les Irois, a fugitive, in his residence where being and speaking to [illegible], so declared;
- 5 – For Mr. Pierrot Boileau, owner, residing and domiciled for service of process in Les Irois, a fugitive, in his residence where being and speaking to [illegible], so declared;
- 6 – For Mr. Guerson Pierre, owner, residing and domiciled for service of process in Les Irois, a fugitive, in his residence where being and speaking to [illegible], so declared;
- 7 – For Mr. France IZME, owner, residing and domiciled for service of process in Les Irois, a fugitive, in his residence where being and speaking to [illegible], so declared;
- 8 – For Mr. Gardy Pierre, owner, residing and domiciled for service of process in Les Irois, a fugitive, in his residence where being and speaking to [illegible], so declared;
- 9 – For Mr. Agnel JEAN, owner, residing and domiciled for service of process in Les Irois, a fugitive, in his residence where being and speaking to [illegible], so declared;
- 10 – For Mr. Bel ESTO, owner, residing and domiciled for service of process in Les Irois, a fugitive, in his residence where being and speaking to [illegible], so declared;
- 11 – For Mr. Sedernier Fleurime, owner, residing and domiciled for service of process in Les Irois, a fugitive, in his residence where being and speaking to [illegible], so declared;
- 12 – For the General Directorate for Taxes (Direction Générale des Impôts, DGI), represented by Joël Bernadin, Grand'Anse Département Director, owner, residing and domiciled for service of process in Jérémie in his offices, where being and speaking to [illegible] so declared;

received on 11/19/2015 [stamp:] DIRECTION GENERALE DES IMPOTS [signature] 11/19/15 [illegible stamp] [signature]

13 – at the door of the District Civil Court (*Tribunal de Paix*) of the Municipality of Les Irois

Copy of the first authentic copy in enforceable form of a judgment rendered by the Criminal Court of the jurisdiction of Les Cayes pursuant to Articles 179 and 366 of the Code of Criminal Investigation (*Code Instruction Criminel*) by Mr. Bénit NOEL, dated Friday, July third, two thousand fifteen, the enacting clause of which reads as follows: “*Wherefore, the Court orders the Public prosecutor of the Government to do what is legal for said defendants to appear in court within ten days from the date of this order; otherwise, they would be declared in contempt of court, and suspended from exercising their rights as citizens; their property shall be seized, and the proceedings in absentia shall be prosecuted against them.*”

*Considering that they are accused of assassination and complicity in assassination, of shooting and wounding with gun shots Judex IZME and Nissage MARTYR, and assassination of Ecclesiaste Boniface, destruction of public property, to state that they shall be arrested.*

*So ruled and ordered by me, Benit Noel, Senior Member of the Criminal Court, in the presence of Mr. Wilnorce Sanon, Deputy Public Prosecutor of the Government assisted by Mr. Michel Charles, Court Clerk in session at the hearing in criminal court held on Friday, July third, two thousand fifteen. In the 212<sup>th</sup> year of Independence.*

*It is Ordered, etc..... etc.*

*In witness whereof, etc..... etc.”*

So that they are not unaware hereof and have to comply with it, I, the aforementioned and undersigned Process Server, as stated, undersigned, served, gave, and left a copy of this document and that of my writ to each of them separately, and affixed thereto the special judicial stamp required by the regulations for all those required by law. The cost of the document is \_\_\_\_\_ gourdes.

For the Order to serve:

[illegible], Atty. [stamp:]  
[illegible] [illegible]  
Folio [illegible]  
Public Prosecutor of the Government at the Jérémie Box [illegible]  
Court of First Instance Total [illegible]  
Total [illegible]  
Received by the CG. [illegible] [signature]

*Maître* [illegible]

On 11/19/15 [signature]

Process Server  
[seal]:  
Osna Jean Petib  
[illegible]  
Jérémie  
[illegible]

[seal:]  
CARCASSE ANNEXE DISTRICT CIVIL  
COURT OF LES IROIS  
[signature]  
*Gerald Charles*

*Justice of the Peace*

*Received on 11/20/2015*

The Process Server

[signature]





REPUBLIC OF HAITI

LIBERTY

EQUALITY

FRATERNITY

**IN THE NAME OF THE REPUBLIC**

**Excerpt from the original documents of the Office of the Les Cayes  
Court of First Instance.**

**IN THE NAME OF THE REPUBLIC**

*hearing held in a criminal case on Friday, July 3, twenty fifteen. In the 212th year of Independence. The cases on the docket were called, and number 15/00002 was selected by Mr. P. The Office of the Public Prosecutor, represented by Mr. Wilnorcé Sayon[illegible], Deputy Commissioner of the Government at the Les Cayes Court of First Instance, and after requesting and taking the floor, asked the court to order the Court Clerk of the headquarters to read the indictment and the remand order. Afterwards, the Court found that the defendants were appearing in court free, only accompanied by the agents of the Haitian National Penitentiary Administration (Administration Pénitentiaire Nationale, "APENA") to prevent them from escaping.*

*The criminal court moved on to the identification of the first dependant:*

*I.: What are your surname, given name, age, occupation, and residence?*

*A.: My name is Léonel Livert, age 45, born in Les Irois, and I am a farmer by occupation.*



*2. Identification for the second defendant:*

*My name is Jean Louis Bel, age 30, born in les Irois, in the 3rd Matador section, a farmer by occupation.*

*3. The court moved on to the identification of the 3rd defendant.*

*My name is Dorcenat Monès, age 35, born in Les Irois, residing and domiciled for service of process in Port-au-Prince, a mason by occupation.*

*4. My name is Lissage Viliena, age 71, born in Les Irois, farmer by occupation.*

*5. My name is Charles Louinès, age 36, born in Les Irois and residing and domiciled there for service or process, a fisherman by occupation.*

*After identification of the defendants, the attorneys of the counsel for the defense requested documents appointing them to provide the defense arguments of their defendants present here. The court formally acknowledged the defense.*

*Messrs. Fleury Jean Dieumel, Mario Joseph, Jr., Siméon Valet, and Louis Roosevelt requested documents appointment them to provide for the interests of the party filing suit for civil damages. The court formally acknowledged said request.*

*At the request of the Office of the Public Prosecutor, the court ordered the Court Clerk of the headquarters to read the enacting clause of the decision before ruling the enacting clause of the decision before ruling of the Court of Cassation of the Republic.*

*The counsel for the defense asked the criminal court to authorize the Office of the Public Prosecutor to transmit to them all the exhibits in the case file, and the court formally acknowledge to the Office of the Public Prosecutor's transmission thereof.*

*The Office of the Public Prosecutor represented by Mr. Wilnorce Sanon, after requesting and being given the floor presented the exposition of the case.*

-3-

*The Office of the Public Prosecutor brought to the attention of the Court the mayor at the time Jean Morse Viliena, who was at the head of a group and who sowed terror to the point of killing Mr. Ecclesiaste Boniface and Nissage, one of whose legs has been amputated, and the Office of the Public Prosecutor acceded to the application of Article 179 of the Criminal Code, which refers to Article 366 of the same code.*

*- In the name of the Republic -*

*In consideration of the application filed by the Office of the Public Prosecutor*

*In consideration of Article 179 of the Code of Criminal Investigation (Code d'Instruction Criminelle, 'C.I.C.)*

*Whereas, the defendants Jean Morose Viliena, an adult, residing and domiciled for service of process in Les Irois, a fugitive, 2) Méritus Beaulanc alias ti-américaine, 3) Duclonia Viliena, Kenson Martyr, Pierre Beaulot, Guerson Pierre, France Izme, Gardy Jean Pierre, Angel Jean, Este Bol, Michelet Noël, Sédernier Fileurimé, all adults, residing and domiciled for service of process in Les Irois, fugitives.*

*Whereas, the acts cannot remain unpunished.*

*\* - Wherefore, the court orders the Public Prosecutor of the Government to do what is legal to ensure that the defendants appear in court within ten days from the date of this order; otherwise they would be declared in contempt of court, and suspended from exercising their rights as citizens; their property shall be seized, and the proceedings in absentia shall be prosecuted against them.*

*Considering that they are accused of assassination and complicity in assassination, of shooting and wounding with gunshots Judex IZME and Nissage MARTYR, and assassination of Ecclesiaste Boniface, destruction of public property, to state that they shall be arrested.*

*So ruled and ordered by me, Benit Noel,*

-4-

*Senior Member of the Criminal Court, in the presence of Mr. Wilnorce Sanon, Deputy Public Prosecutor of the Government assisted by Mr. Michel Charles, Court Clerk in session at the hearing in criminal court held on Friday, July third, two thousand fifteen. In the 212th year of Independence.*

*It is Ordered, etc..... etc.*

*In witness whereof, etc..... etc.”*

[signature]  
*Bernaret Jean Pierre*  
*Court Clerk*

[illegible seal]

[stamp:]  
Recorded in Jérémie [illegible] \_\_\_\_\_  
Folio [illegible] \_\_\_\_\_  
Box [illegible] Register [illegible] No. [illegible] \_\_\_\_\_  
Total collected in figures \_\_\_\_\_  
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The tax collector [signature] \_\_\_\_\_





**LIBERTE**

**EGALITE**

**FRATERNITE**

**EXTRAIT DES MINUTES DU GREFFE TRIBUNAL DE PREMIERE INSTANCE DES CAYES**

**AU NOM DE LA REPUBLIQUE**

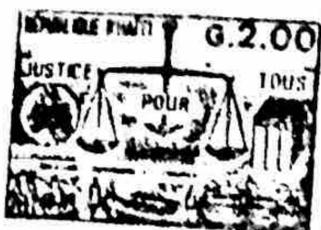
**Jugement**

Le Tribunal de Première Instance des Cayes siégeant au Palais de justice de cette ville, Rue du Quai No 5 a rendu en audience publique et en ses attributions criminelles sans assistance de jury le jugement suivant entre :

- 1) Le Ministère Public, représenté par Me Wilnoce **SANON**, Substitut Commissaire du Gouvernement près le Tribunal de Première Instance des Cayes, agissant au nom de la vindicte publique et comme étant le représentant de la société d'une part ;
- 2) **Les Plaignants :**
  - a) **BONIFACE** David, frère de la victime **BONIFACE** Ecclésiaste, age majeur, Enseignant, demeurant et domicilié aux Irois ;
  - b) Juders **ISME**, victime ayant perdu son œil droit, le 8 avril 2008, age majeur, élève de rhéto. demeurant et domicilié aux Irois ;
  - c) Nissage **MATYR**, victime ayant perdu sa jambe droite le 8 avril 2008, Age majeur, demeurant et domicilié aux Irois ;

Et

- 3) **Les accusés**
  - a) Léonel **LIVERT** alias « Lifaite » « âgé de 45 ans, né aux Irois y demeurant et domicilié cultivateur, actuellement détenu en la prison Civile des Cayes ;
  - b) Jean Louis **BELLE**, âgé de 30 ans, né à Matador troisième section des Irois y demeurant et domicilié, cultivateur, éleveur, actuellement détenu en la prison Civile des Cayes ;
  - c) **DORCENAT** Monès, Alias Antoine, âgé de 35 ans, né aux Irois, demeurant à Port-au-Prince et domicilié aux Irois, maçon de profession, actuellement détenu en la prison Civile des Cayes ;
  - d) Lissage **VILIENA**, âgé de 71 ans, né à la quatrième section de la commune d'Anse d'Hainault demeurant et domicilié aux Irois, cultivateur, actuellement détenu en la prison Civile des Cayes ;
  - e) **CHARLES** Louinès alias, « Kèleman » âgé de 37 ans, né aux Irois y demeurant et domicilié, pêcheur, actuellement détenu en la prison Civile des Cayes ;
  - f) Ainsi que les autres accusés : Jean Morose **VILIENA**, Méritus **BEAUBLANC**, **VILIENA** Duclona , **MARTYR** Kenson, **BOILEAU** Pierrot, Guerson **PIERRE** , France **ISEME**, **JEAN PIERRE** Gardy, Angel **JEAN** , Esto **BELLE**, Cedemier **FLEURIME**, Michele **NOEL**, tous , âgé , majeur, en fuite , demeurant et domicilié aux Irois ;



## FAITS

Le 27 Juillet 2007, le Maire des Irois Jean Morose **VILIENA** à la tête d'un groupe d'individus armés ont juré les grands dieux de semer la terreur aux Irois, en Criant : « Kan'I lè sizè tout moun Fèmen pot », puis ils ont passé de la parole aux actes en assassinant la victime **BONIFACE** Ecclesiaste ce jour-là en lui administrant une balle à la tête et une rafale de coups de pierre.

Le 8 avril 2008, ces mêmes individus ont pillé " la Radio Nouvelle" aux Irois Nissage Martyr propriétaire de la maison où se trouvait la radio a reçu des coups et blessures par balle à la jambe droite amputée à cause de ces blessures.

Juders **ISEME**, un jeune écolier qui se trouve à la station de radio a été atteint d'une balle à l'œil droit occasionnant sa cécité.

Le 15 avril 2008 Nissage **MARTYR** a porté plainte contre Jean Morose **VILIENA** et ses hommes de troupe pour destruction de sa maison et attentat à sa vie.

Le 16 avril 2008, les responsables d'une organisation des Irois dénommée : « TADI », par lettre de plainte, demandant au parquet de Jérémie de mettre l'action publique en mouvement contre Jean Morose **VILIENA** et ses hommes de troupe pour : Destruction de la : « **RADIO NOUVELLE** » au préjudice de la Communauté des Irois, Assassinat de **BONIFACE** Ecclesiaste.

Le 16 avril 2008, le Commissaire du Gouvernement de Jérémie par son Réquisitoire d'Informier a sans le Cabinet d'Instruction requérant au Juge Instructeur d'enquêter sur les faits allégués dans son réquisitoire d'Informier à savoir : l'Assassinat de **BONIFACE** Ecclesiaste, La destruction de la Radio Nouvelle », coups et blessures par balles sur les personnes de Nissage **MATYR** et Juders **ISEME**.

A la fin de l'instruction du dossier le Juge Instructeur a rendu son ordonnance de clôture en date du 27 janvier 2010, renvoyant Jean Morose **VILIENA** , et ses hommes de troupe par devant le Tribunal Criminel de Jérémie, siégeant sans assistance de Jury ; Tous, inculpés : « d'assassinat et complicité d'assassinat sur la personne de **BONIFACE** Ecclesiaste ; de coups et blessures par balle sur les personnes de Juders **ISEME** et Nissage **MATYR** ; de destruction de bien public au préjudice de la Communauté des Irois.

Le Tribunal de Première Instance de Jérémie, siégeant en ses attributions criminelles et sans assistance de jury, à l'audience du lundi vingt cinq octobre deux mille dix, a condamné les accusés : 1) Lafant **LIVET** 2) **MONES** Dorcenat 3) Louinès **CHARLES** 4) Jean Louis **BELLE** 5) Michelet **NOEL** 6) Lissage **VILIENA**

A neuf (9) ans de travaux forcés puisqu'ils ont été trouvés coupables de : complicité d'assassinat sur la personne de **BONOFICE** Ecclesiaste, de destruction de bien public au préjudice de la Communauté des Irois, de coups et blessures par balle sur Juders **ISEME** et Nissage **MATYR**.

Mécontents du jugement de la cour d'Assise de Jérémie, ces condamnés ont exercé un pourvoi en Cassation du jugement du Tribunal Criminel de Jérémie en date du 25 Octobre 2010, siégeant sans assistance de Jury.

Après délibération en chambre du Conseil, la Cour de Cassation a rendu son arrêt le jeudi 24 mai 2012 ( vingt quatre mai deux mille douze) ; annulant le jugement du Tribunal Criminel Jérémie pour violation de l'article 304 du Code Instruction Criminel, vu que le greffier a omis de dresser le procès-verbal de séance ; à l'effet de constater que les formalités prescrites par la loi ont été observées ; Renvoyant cause et les parties par devant le Tribunal Criminel des Cayes sans assistance de Jury pour y être fait ce que de droit.

A l'audience Criminelle sans assistance de Jury au Palais de justice des Cayes en date du vendredi juillet 2015, l'affaire inscrite au no : 15/0002 a été évoquée et retenue par le Ministère Public, représenté par Me Wilnoce **SANON**, Substitut Commissaire du Gouvernement près le dit Tribunal.

Par arrêt de la Cour de Cassation, l'ordonnance de renvoi du juge Instructeur et l'acte d'accusation du Ministère Public la Cour d'Assise des Cayes sans assistance de Jury a été saisie pour connaître de cet affaire. Le Doyen du Tribunal Criminel, Magistrat Bénédict **NOEL**, au Greffier de noter sur le pluriel d'audience que les accusés comparaissent libre et seulement accompagnés de policiers pour l'empêcher de s'évader.

Puis le Doyen du Tribunal Criminel siégeant sans assistance de Jury a passé à l'identification des accusés qui ont indiqué leurs : Nom, Prénom, Age, Profession, domicile, demeure et lieu de naissance. Après leur identification, le Doyen du Tribunal Criminel a donné acte aux conseils des accusés et de

partie Civile qui l'avaient sollicité et il a averti au conseil de l'accusé qu'il ne peut rien dire contre sa conscience ou contre le respect dû aux lois et qu'il doit s'exprimer avec décence et modération.

Après quoi, le Doyen a averti les accusés d'être très attentifs à ce qu'ils vont entendre. A la suite de ce avertissement, le Tribunal a ordonné au Greffier de procéder à la lecture de l'Arrêt de la Cour de Cassation, de l'ordonnance de renvoi et l'acte d'Accusation du Ministère Public. Ceci étant fait, le Doyen du Tribunal a expliqué aux accusés le contenu de ces actes, lus par le Greffier et leur disant "Voilà de quoi vous êtes accusés"; vous allez entendre les charges qui seront produites contre vous. Ensuite, le Ministère Public, représenté par Me Wilnonce **SANON**, Substitut Commissaire du Gouvernement a fait l'exposé de l'affaire et a montré les circonstances de la perpétration des infractions reprochées aux accusés.

Après avoir constaté l'absence des accusés en fuite à l'audience du jour, le Ministère Public a demandé à la Cour Criminelle d'appliquer l'article 179 du Code Instruction Criminelle qui se réfère à l'article 366 du Code Instruction Criminelle contre eux. Le Doyen du Tribunal Criminel sans assistance de Jury Magistrat, Benit **NOEL**, en application de ces articles a rendu l'ordonnance prévue par les dispositions de l'article 366 du Code Instruction Criminelle, relativement à la procédure par contumace. Ensuite le Ministère Public a présenté la liste des plaignants aussi que celle des témoins. Les témoins ont été appelés à trois fois et à haute voix par le Greffier du siège après avoir été ordonné par le Doyen du Tribunal Criminelle.

Le Tribunal a passé à l'audition des plaignants :

- 1) David **BONIFACE**, âgé de 34 ans, né aux Irois y demeurant et domicilié, enseignant ; 2) Juders **ISEME**, âgé de 28 ans, né aux Irois y demeurant et domicilié, Etudiant ; 3) Nissage **MARTYR**, âgé de 55 ans, né aux Irois y demeurant et domicilié, commerçant ;
- 2) Ces plaignants et parties Civiles ont été régulièrement auditionnés par le Tribunal Criminelle siégeant sans assistance de Jury. Ils ont été ensuite questionnés par le Doyen du Tribunal Criminelle, le Ministère Public; le conseil de la partie Civile et le conseil des accusés Via le Doyen du Tribunal Criminelle.

Après l'audition des plaignants, les personnes préalablement citées comme témoins par le Ministère Public ont été entendues à titre de Renseignement; vu que le Commissaire du Gouvernement n'a pas notifié la liste des témoins aux accusés dans le délai légal.

Les donneurs de renseignement :

- 1) Laguerre Jean **DENIS**, âgé de 55 ans, né à Saint Jean du Sud, demeurant et domicilié aux Irois, Enseignant ;
- 2) Franckel **ISEME**, âgé, de 44 ans, né aux Irois y demeurant et domicilié, Cultivateur ;
- 3) Mersy **ISEME**, âgé de 54 ans, né aux Irois y demeurant et domicilié, Pêcheur ;
- 4) Rodné Marc **LEBON**, âgé de 28 ans, né aux Irois y demeurant et domicilié, Etudiant ont été entendus par le Tribunal Criminelle et interrogés à tour de rôle par le Doyen du Tribunal, le Ministère Public, le conseil de la partie Civile et le conseil de la défense. Ils ont tous affirmé au Tribunal que ces accusés ont commis les actes à eux reprochés. Puis le Doyen a présenté les procès-verbaux et toutes les autres pièces du dossier aux accusés puisque la liste des témoins n'a pas été notifiée aux accusés. L'audience a été suspendue pour être reprise le lundi 6 juillet 2005.

Le Tribunal Criminelle a procédé à l'interrogatoire des accusés suivants à la reprise de l'audience en date du Lundi 6 juillet 2015 :

- 1) L'accusé Léonel **LIVERT** alias **LIFAITE** a été interrogé par le Doyen du Tribunal Criminelle, le Ministère Public, le conseil de la partie Civile et le conseil de l'accusé.
- 2) Puis le Tribunal passe à l'interrogatoire de l'accusé Jean Louis **BELLE** qui est tombé d'une crise de maladie et a perdu conscience. Le Doyen du Tribunal a dressé le procès verbal de constat et a ordonné son transport d'urgence à l'hôpital Immaculée Conception des Cayes, a suspendu l'audience pour être reprise à la huitaine, soit le lundi 13 juillet 2015.

L'audience est reprise, le tribunal criminel siégeant sans assistance de jury a poursuivi l'interrogatoire des accusés :

- 3) Dorceena **MONES**, Lissage **VILIENA**, Leonel **LIVERT** alias Lifaite **CHARLES** Louines et Jean Louis **BELLE**, puis les a conforté avec les plaignants : David **BONIFACE**, Nissage **MATYR** et Juders **ISEME** à tour de rôle. Les plaignants maintiennent tous leurs déclarations en affirmant que les cinq accusés présents à l'audience ont participé à la perpétration des infractions à eux reprochées et le plaignant David **BONIFACE** a déclaré n'avoir pas vu personnellement Dorceena **MENES**, lors de





l'assassinat de son frère **BONIFACE** Ecclésiaste, mais n'a pas nié sa présence dans le groupe armé de Jean Morose **VILIENA**.

Mais les plaignants demeurent constants dans leurs déclarations reconnaissant que les cinq accusés ici présents à l'audience criminelle sans assistance de jury, du lundi 13 juillet 2015 ont encouragé, « Vilème **DUCLONA** à tirer sur Nissage **MARTYR** qui a perdu sa jambe droite et sur **ISEME** Juders qui a perdu son œil droit, sur les ordres de Jean Morose **VILIENA**, accusé qui est en fuite. Et, c'est ce même groupe armé de Jean Morose **VILIENA** qui a tiré **BONIFACE** Ecclésiaste en lui administrant une balle à la tête le 27 juillet 2007 aux Irois et une rafale de coups de pierre.

Après l'interrogatoire des accusés, le Doyen du Tribunal criminel a demandé au greffier de noter sur le plumitif que : « les accusés ont eu la parole en dernier », déclarant « clos les débats particuliers » et a ordonné une suspension d'audience de (10) dix minutes

A la reprise de l'audience, le Doyen du Tribunal Criminel a déclaré que les débats généraux sont ouverts et a accordé la parole au Ministère Public qui l'avait sollicitée, lequel a soutenu son acte d'accusation et conclu en demandant : « au Doyen du Tribunal criminel sans assistance de Jury de constater que les faits reprochés aux accusés sont constants et de condamner : Leone **LIVERT** alias Lifaite, Jean Louis **BELLE**, **DORCENAT** Monès ; Lissage **VILIENA** **CHARLES** Louinès alias Kèleman à sept ans de travaux forcés, sous les accusations de complicité d'assassinat de **BONIFACE** Ecclésiaste en date du 27 juillet 2007, destruction de bien public au préjudice de la communauté des Irois, de coups et blessures par balles sur la personne de : Juders **ISEME** et de Nissage **MARTYR** en date du huit (8) avril 2008 ; en vertu des dispositions des articles 2, 44, 45, 241,358, 254 et suivants du Code pénal haïtien ; sans préjudice de la loi sur la prison préventive et conformément aux articles 144, 45, 24,254,350,382 du Code Pénal Haïtien ».

De plus, le conseil de la partie Civile a demandé au Tribunal, outre la peine requise par le Ministère Public, de condamner les accusés à deux milliards (2,000,000,000) de gourdes de dommages intérêts en faveur la partie civile, représentée par : **BONIFACE** David Juders **ISEME** et Nissage **MATYR** ; en réparation des préjudices causés à ces plaignants et, ce, en vertu des articles 1168 et 1169 du Code Civil Haïtien, de l'article 5 de la convention interaméricaine de droit de l'homme et de l'article 7 du Pacte International relatif aux droits civils et politiques.

Enfin le Conseil des accusés a demandé au tribunal de procéder à la libération des cinq accusés présents à l'audience du jour en les déclarants innocents, vu que les auteurs présumés des infractions à eux reprochées sont en fuite. A cet effet, le Tribunal ne doit pas les considérer comme complices.

Le Doyen du Tribunal Criminel a demandé au greffier de noter sur le plumitif d'audience que « le conseil des accusés à eu la parole en dernier » et a déclaré clos les débats généraux.

**Sur ce, la Cour met l'affaire en délibéré pour se prononcer dans le délai légal.**

### LE TRIBUNAL

Après avoir analysé minutieusement le dossier de l'affaire, tant au point de vue de la forme qu'au fond, statue de la manière suivante :

Vu les textes de loi régissant la matière notamment :

Les articles : 2, 44, 45, 241, 254, et suivants, 382, 19, 358 du Code Pénal Haïtien.

Les articles 1168, 1169 du Code Civil Haïtien relatifs aux dommages – intérêts réclamés par la partie civile via le conseil de la partie civile.

Vu les pièces versées au dossier enregistré au numéro : 15/0002 notamment :

- 1- Acte de décès de **BONIFACE** Ecclésiaste en date du 27 juillet 2007.
- 2- Procès verbal de constat du Juge de Paix des Irois daté du 9 Avril 2008.
- 3- Deux certificats médicaux de Juders **ISEME** du 21 avril 2008 et du 29 avril 2008.
- 4- Certificat médical de Nissage **MATYR** du 5 mai 2008
- 5- Ordonnance de soit communiqué en date du 23 mai 2008 aux fins de réquisitoire d'informer Réquisitoire d'Informer daté du 9 juin 2008.
- 6- Réquisitoire aux fins de main levée du mandat de dépôt en date du 22 juin 2009.

- 7- Requête de VILIENA Morose, Libelto EDMOND, Vilès EDMOND, Sanite COMTE en date du 07 octobre 2008.
- 8- Ordonnance aux fins de main levée du mandat de dépôt en date du 9 mars 2009.
- 9- Réquisitoire définitif de Ministère Public en date certaine
  - 1) Ordonnance de renvoi du Cabinet d'Instruction renvoyant les inculpés : Léonel LIVERT alias Lifaite, Jean Louis BELLE, DORCENAT Monès alias Antoine, Lissage VILIENA CHARLES Louines Kéleman ;
  - 2) Jean Morose VILIENA, Meritus BEAUBLANC, VILIENA Duclona, MARTYR Kenson BOILEAU Pierrot, Guerson PIERRE, France ISEME, JEAN PIERRE Gardy, Ange JEAN, Isto BELLE, Cedernier FLEURIME, Michelet NOEL par devant le tribunal criminel siégeant sans assistance de jury, daté du 25 janvier 2010.  
Jugement du Tribunal Criminel de Jérémie condamnant ces accusés à 9 ans de travaux forcés, daté du 25 octobre 2010.  
Arrêt de la Cour de Cassation annulant le jugement du Tribunal Criminel de Jérémie siégeant sans assistance de jury qui renvoie la cause et parties par devant le Tribunal Criminel des Cayes sans assistance de jury.

Acte d'accusation du Ministère Public en date certaine.

Vu toutes les autres pièces versées au dossier à transcrire par la greffier.....

Vu l'ouverture solennelle du Tribunal Criminel des Cayes siégeant sans assistance de Jury en audience publique à la rue du Quai no 5, le vendredi 03 juillet 2015, avec constatation que les accusés précités comparaissent libres et seulement accompagnés de policiers pour les empêcher de s'évader.

Vu l'identification de ces accusés suivi des avertissements à leur adressés par le Doyen.

Vu la lecture de l'ordonnance de renvoi de l'acte d'accusation et de l'Arrêt de la Cour de Cassation par le Greffier.

Vu le rappel aux accusés du contenu de l'acte d'accusation de l'ordonnance de renvoi et de l'Arrêt de la Cour de Cassation par le Doyen du Tribunal Criminel siégeant sans assistance de jury qui leur demande d'être très attentifs à ce qu'ils vont entendre.

Vu l'exposé du sujet de l'acte d'accusation par le Ministère Public et la présentation de la liste des témoins au Doyen.

Vu la lecture de la liste des témoins par le greffier.

Vu l'intervention du conseil de l'accusé demandant au Doyen d'écarter ces témoins, vu que la liste des témoins n'a pas été notifiée aux accusés dans le délai légal par le Ministère Public.

Vu la décision du Doyen du Tribunal Criminel d'entendre les personnes citées comme témoin par le Ministère Public, à titre de renseignement.

Vu l'appel des plaignants : David BONIFACE, Juders ISEME et Nissage MARTYR ;

Vu l'absence des témoins à charge et à décharge.

Vu l'interrogatoire des accusés.

- 1) Léonel LIVERT alias Lifaite
- 2) Jean Louis BELLE
- 3) DORCENAT Monès alias Antoine
- 4) Lissage VILIENA
- 5) CHARLES Louinès alias Kéleman

Vu le constat fait par le Tribunal que les accusés ont eu la parole en dernier.

Vu la fermeture des débats particuliers et l'ouverture des débats généraux par le Doyen du Tribunal Criminel siégeant sans assistance de Jury au Palais de Justice des Cayes

Vu la soutenance de l'acte d'accusation par le Ministère Public, représenté par Me Wilnoce SANON Substitut Commissaire du Gouvernement près du Tribunal de Première Instance des Cayes, ayant dicté ses conclusions

Vu l'intervention du Conseil de la partie Civile

Vu les répliques du conseil des accusés qui a dicté ses conclusions

Vu l'intervention du Doyen du Tribunal Criminel des Cayes siégeant sans assistance de Jury, Magistrat Bénédict NOEL, qui a demandé au greffier de noter sur le plumitif d'audience que: « le conseil des accusés a eu la parole en dernier ». Sur ce, le Tribunal mis l'affaire en délibéré pour se prononcer dans le délai légal.

A l'audience de ce jour, le Tribunal rend sa décision en se basant sur le questionnaire suivant qu'il s'est posé :

DROIT

a) En la forme :

- 1) Le Tribunal est-il compétent pour connaître de la présente affaire ?
- 2) L'affaire est-elle recevable en la forme ?

Au fond

- 3) Y-a-t-il lieu de faire droit à la demande du Ministère Public ou à celle du conseil de  
accusés ?
- 4) Les dommages intérêts réclamés par le conseil de la partie civile doivent-ils être accordés ?
- 5) Quid des frais et dépens de la procédure ?

Attendu que le 27 juillet 2007, Jean Morose **VILIENA**, en fuite, Maire des Irois à cette époque et son groupe armé composé de : Léonel **LIVRET** alias **LIFAITE**, Jean Louis **BELLE**, **DORCENAT** Monès alias **ANTOINE**, Lissage **VILIENA**, **CHARLES** Louinès alias **Kèleman**.- Ces cinq accusés ont été jugés par le Tribunal Criminel des Cayes d'une part ; d'autre part les accusés en fuite : Méritus **BEAUBLANC**, **VILIENA** Duclona **MARTYR** Kenson, Pierrot **BOILEAU** France **ISEME** **JEAN PIERRE** Gardy, Guerson **PIERRE**, Angel **JEAN**, Esto **BELLE**, Cedernier **FLEURIME**, Michel **NOEL** ; on assassiné **BONIFACE** Ecclésiaste en lui administrant une balle à la tête, et une rafale de coups de pierre ;

Attendu que tous les membres du groupe sont complices de cet assassinat au vu de l'article 45 du Code Pénal Haïtien ;

De ce fait, ils seront punis de la même peine que l'auteur exécutant "Haute Fort Bajon" ainsi que l'auteur intellectuel de cet assassinat Jean Morose **VILIENA** selon les dispositions de l'article 44 du Code Pénal Haïtien ;

Attendu que l'assassinat est un crime prévu et puni par l'article 241 du Code pénal haïtien :

Attendu que le 08 avril 2008, Jean Morose **VILIENA**, maire des Irois à cette époque à la tête de son groupe armé, composé des accusés précités ont pillé les matériels de la "Radio **NOUVELLE**" des Irois et détruit la maison logeant la dite station de radio, causant par ces actes l'infraction de destruction de bien public au préjudice de la communauté des Irois prévue par l'article 358 du Code pénal haïtien. Ils ont porté des coups et blessé par Balle les plaignants Juders **ISEME** qui a perdu son œil droit et **NISSAGE** Martyr qui a perdu sa jambe droite, amputé à cause de ces blessures ; faits prévus et punis par les articles 254 et suivants du code pénal haïtien ;

Attendu que les plaignants ont identifié les auteurs : Jean Morose **VILIENA**, **DUCLONAT** **Vilème** ainsi que les autres accusés présents à l'audience de ce jour et ceux qui sont en fuite comme étant les complices de ces infractions puisqu'ils ont par machination et menace incité « Vilème **DUCLONAT** » à tirer sur Nissage **MATYR** et Juders **ISEME**. en lui disant « Jean Morose peye w pou w tire neg la tirel ». Et, ils ont tous administré des coups à Nissage **MARTYR**. Ces plaignants demandent justice et réparation ;

Attendu que le plaignant **BONIFACE** David a vu les accusés présents à l'audience criminelle de ce jour, ainsi que ceux qui sont en fuite, avant et après l'assassinat de son frère « **BONIFACE** Ecclésiaste ». Puisqu'ils lui avaient proféré constamment des menaces de mort ; lequel demande justice et réparation ;

Attendu que les déclarations des plaignants sont constantes et corroborées par celles de donneurs de renseignement entendus par le Tribunal Criminel des Cayes dans le cadre de cette affaire ;

Puisque les donneurs de renseignement ont affirmé au tribunal criminel des Cayes que : Jean Morose **VILIENA** et les cinq accusés présents à l'audience de ce jour, ainsi que ceux qui sont en fuite ont assassiné **BONIFACE** Ecclésiaste, détruit et pillé la « radio Nouvelle : » des Irois, tiré sur : Nissage **MARTYR** et détruit sa maison logeant la station de « radio Nouvelle », tiré sur Juders **ISEME** en plein jour et aux yeux des habitants des Irois ;

Attendu qu'à l'audience criminelle sans assistance de jury des Cayes les accusés : Léonel **LIVRET** alias **Lifaite**, Jean Louis **BELLE**, **DORCENAT** Monès, Lissage **VILIENA**, **CHARLES** Louinès alias **Kèleman**, comparaissent libres et seulement accompagné de policiers pour les empêcher de s'évader. Ils ont eu la parole en dernier au cours des débats



7

particuliers et que le conseil de défense a eu la parole en dernier au cours des débats généraux, demandant au tribunal criminel de libérer les accusés;

Attendu les accusés en fuite : Jean Morose **VILIENA**, Meritus **BEAUBLANC**, **VILIENA** Duclona, **MARTYR** Kenson, **BOILEAU** Pierrot, Guerson **PIERRE**, France **ISEME**, **JEAN PIERRE** Gardy, Angel **JEAN**, Esto **BELLE**, Cedernier **FLEURIME**, Michel **NOEL**, ne comparaissent pas à l'audience criminel sans assistance de jury de ce jour, et que sur réquisition du Ministère Public, représenté par Wilnoce **SANON**, le Tribunal Criminel des Cayes a appliqué contre ces accusés en fuite l'article 366 du Code d'Instruction Criminelle de **Menan PIERRE LOUIS** et suivants, étant en fuite, ils sont susceptibles d'être jugés par contumaces.

Attendu que le conseil de la partie civile a réclamé deux milliards (2,000.000.000) de gourdes à titre de dommages-intérêts en faveur des plaignants ;

Attendu que les accusés présents au tribunal criminel des Cayes, à l'audience de ce jour ont été jugés sous les chefs d'accusation : d'Assassinat et Complicité d'assassinat de **BONIFACE** Ecclésiaste le 27 juillet 2007, de destruction de bien public au préjudice de la communauté des Irois le 8 Avril 2008, de coups et blessures par balle sur Juders **ISEME** qui a perdu son œil droit et sur Nissage **MATYR**, amputé de sa jambe droite, le 8 avril 2008 ;

Attendu que ces infractions sont prévues et punies par les articles : 44, 45, 241, 254, et suivants, 358 du Code Pénal Haïtien. ;

Attendu qu'il y a lieu de faire application des articles susdits'

Attendu que le Ministère Public, représenté par Me Wilnoce **SANON** a demandé au Tribunal Criminel des Cayes de condamner ces accusés à sept ans de travaux forcés, sans préjudice de la loi sur la prison préventive en vertu des articles 2, 44, 45 241, 254, et suivants, 358 du Code Pénal Haïtien ;

Attendu que le conseil de la défense, représenté par Me **LEONARD** Jean Youry, **Georges** Joseph et Maxon **ESTA** a demandé au Tribunal de libérer ces innocents, Vu que les cinq accusés présents à l'audience Criminel sans assistance de Jury de ce jour ne peuvent pas être considérés comme complices des infractions à eux reprochées puisque les auteurs présumés de telles infractions sont en fuite ;

Attendu qu'il y a lieu de faire droit aux conclusions du Ministère Public, dictées dans son réquisitoire oral, à l'audience Criminelle sans assistance de Jury, au Palais de Justice des Cayes, à la rue du Quai # 5, le lundi 13 juillet 2015 ;

**PAR CES MOTIFS**, Le Tribunal, sur les conclusions conformes du Ministère Public, après délibération, dit que l'action intentée par le Ministère Public contre les accusés présents à l'audience du jour et ceux qui sont en fuite est de sa compétence, juste et fondée ; déclare que les accusés : Léonel **LIVRET** alias **LIFAITE**, Jean Louis **BELLE**, **DORCENA** Monès alias **ANTOINE**, Lissage **VILIENA** et **CHARLES** Louines alias Kèleman sont coupables de Complicité d'Assassinat sur la personne de **BONIFACE** Ecclésiaste, de destruction de bien public au préjudice de la Communauté des Irois, de coups et blessures par balles sur Juders **ISEME**, et Nissage **MARTYR**, crimes prévus et punis par les articles 44, 45, 241, 254 et suivants, 358 du Code pénal haïtien. En conséquence les condamne à sept ans de travaux forcés, sans préjudice de la loi sur la prison préventive et conformément aux articles 144, 45 24, 254, 350, 382, et 19 du Code pénal haïtien, lesquels articles ont été lus à haute voix par le Juge en siège et sont ainsi conçus :

«

**ARTICLE 45.** Seront punis comme complices d'une action qualifiée crime ou délit : ceux qui, par don, promesse, menaces, abus d'autorité ou de pouvoir, machination ou article coupables, auront provoqué à cette action ou donné des instructions pour la commettre; Ceux qui auront procuré des armes, des instruments ou tout autre moyen qui aura servi à l'action sachant qu'il devait servir ;  
Ceux qui auront avec connaissance, aidé ou assisté l'auteur ou les auteurs de l'action, dans les faits qui l'auront consommée, sans préjudice des peines qui seront spécialement portées par le présent code.

*[Handwritten mark]*

3.900.000

2

78.000

18

250

78022,00

7800,80

390.

157

86370,30

**ARTICLE 241.** Tout meurtre commis avec préméditation ou guet-apens est qualifié assassinat ;

**ARTICLE 254.** Tout individu qui volontairement aura fait des blessures ou porté des Cayes ou commis toute autre violence ou voies de fait, s'il est résulté de ces sortes de violence une maladie ou une incapacité de travail de plus de vingt jours, sera puni d'un emprisonnement d'un an à trois ans:-

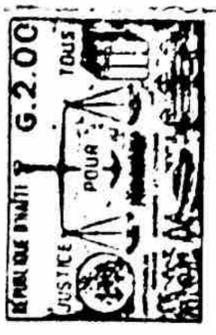
Si les violences ci-dessus exprimées ont occasionné une mutilation, une amputation, ou la privation de l'usage d'un membre, la cécité, la perte de l'œil ou d'autres infirmités permanentes, le coupable sera puni de réclusion.

Si les coups portés ou les blessures faites volontairement, mais sans intention de donner la mort, l'ont pourtant occasionné, le coupable sera puni de travaux forcés à temps.

**ARTICLE 19.** La condamnation à la peine de travaux forcés à temps sera prononcée pour trois ans au moins, et quinze ans au plus.

Article 382, 144, 24, 350 et suivants..... »

Les condamne solidairement à trois millions de gourdes de dommages-intérêts en réparation des préjudices causés à la partie civile, en vertu des articles 1168, 1169, du Code Civil Haïtien, valeur qui sera répartie comme suit : (1.100,000) un million cent mille gourdes à **BONIFACE** David ; un million de gourdes à Nissage **MARTYR** ; neuf cent mille (900,000) gourdes à Juders **ISEME** et faisant application des articles du Code Pénal Haïtien les condamne solidairement aux frais et dépens envers l'Etat, alloue au greffe la somme de cinq mille cent gourdes et, ce, compris le coût du jugement. Quant aux fuyards la procédure par contumace sera enclenchée contre eux et, ce, conformément à la loi pour éviter la réplétion de tels actes qui sont nuisibles à la société ;



Après le prononcé de ce jugement, le Doyen du Tribunal Criminel a ordonné la lecture par le greffier du procès-verbal de l'audience, ce qui a été fait.

Ainsi, jugé et prononcé par nous, Magistrat Bénéit NOEL, Doyen du Tribunal Criminel des Cayes, en audience publique, sans assistance de jury du mardi vingt et un (21) juillet 2015, en présence de Me Wilnoce SANON, Substitut Commissaire du Gouvernement près ce Tribunal occupant le siège du Ministère Public avec l'assistance du sieur Kerven PIERRE VILLE, greffier.

Il est ordonné à tous huissiers sur ce requis, de mettre le présent jugement à exécution, aux Officiers du Ministère Public près les Tribunaux Civils d'y tenir la main, à tous Commandants et autres Officiers de la force publique d'y prêter main forte lorsqu'ils en seront légalement requis. -----

En foi de quoi la minute du présent jugement a été signée du Doyen du Tribunal Criminel, Magistrat Bénéit NOEL et du greffier susdit. -----

Ainsi signés : Bénéit NOEL, Doyen et Mr Kerven PIERRE VILLE Greffier -----

COLLATIONNE CONFORME A LA MINUTE POUR EXPEDITION DELIVREE. -----

*[Handwritten signature]*

*[Handwritten signature]*  
Kerven PIERRE VILLE  
Greffier.-

*Copie conforme à l'original*

05-02-16

RIGINA

L'an deux mille seize et le vendredi cinq (05) du mois de février.

A la requête des sieurs David BONIFACE, Juders ISME et Nissage MATYR, propriétaires, demeurant et domiciliés à la commune des Irois, identifiés respectivement aux numéros : CIN : 08-08-99-1981-01-00007, NIF : 009-729-867-2 ; CIN : 08-08-99-1960-05-00002, NIF : 007-547-195-3 ; CIN : 08-08-99-1987-02-00028, NIF : 009-729-872-1 ayant pour avocats constitués Mes. Mario JOSEPH, Dieunel FLEURY JEAN, Wanique J. UMENE, Kesny LÉON et Roosevelt LOUIS du Barreau de Port-au-Prince, ce dernier du Barreau des Cayes, respectivement identifiés, patentés et imposés aux Nos: 003-129-800-7, 187-014-0-, 187-014-0102-27 ; 004-222-675-9, I-2756840, A-050631, 008-275-283-2, 007-649-735-5,....., avec élection de domicile au cabinet de leurs avocats sis au no.67, Rue Toussaint LOUVERTURE, Les Cayes-Haïti, (W.I).

J'ai, Pierre M. SAINTIL....., huissier de La Cour d'Appel des Cayes, y demeurant et domicilié, identifié au No 005-461-544-2..., soussigné, signifié, donné et laissé :

1.- Au condamné Léonel LIVERT alias « LIFAITE » demeurant et domicilié aux Irois, actuellement détenu en la prison civile des Cayes où étant et parlant à Jean-Louis Belle..... qui a reçu ma copie et visé mon original, ainsi déclaré ;

2.- Au condamné Jean Louis BELLE, demeurant et domicilié aux Irois, actuellement détenu en la prison civile des Cayes où étant et parlant à Jean-Louis Belle..... qui a reçu ma copie et visé mon original, ainsi déclaré ;  
*ne pas donner le savoir*

3.- Au condamné Monès DORCENAT alias « Antoine » demeurant et domicilié aux Irois, actuellement détenu en la prison civile des Cayes où étant et parlant à Dieunel Fleury Jean..... qui a reçu ma copie et visé mon original, ainsi déclaré ;

4.- Au condamné Lissage VILIENA demeurant et domicilié aux Irois, actuellement détenu en la prison civile des Cayes où étant et parlant à Lissage Viliena..... qui a reçu ma copie et visé mon original, ainsi déclaré ;

5.- Au condamné Louinès CHARLES alias « Kèleman » demeurant et domicilié aux Irois, actuellement détenu en la prison civile des Cayes où étant et parlant à Jean-Louis Belle..... qui a reçu ma copie et visé mon original, ainsi déclaré ;

6.- Au Commissaire du Gouvernement près le Tribunal de Première Instance des Cayes, Me Raymond BERGEAU, en son Parquet où je me suis transporté où étant et parlant à Me Raymond Bergeau..... Ainsi déclaré ;

*Copie de la grosse en forme exécutoire d'un jugement rendu par le Tribunal de Première Instance des Cayes, en ses attributions criminelles sans assistance de jury, en date du mardi vingt-et-un (21) juillet deux mille quinze (21/07/2015), disant et déclarant que les nommés*

*au parquet des Cayes*

*Lissage Viliena*

*Louinès Charles*



Léonel LIVERT, Jean Louis BELLE, Monès DORCENAT, Lissage VILIENA et Louinès CHARLES sont reconnus coupables de complicité d'assassinat sur la personne de Ecclésiaste BONIFACE ; de destruction de bien public au préjudice de la communauté des Irois ; de coups et de blessures par balles sur Juders ISME, et Nissage MARTYR. En conséquence, les condamnés à sept (7) de travaux forcés. Lequel jugement est dûment signé, scellé et collationné ce, aux fins utiles de droit.

A ce qu'ils n'en ignorent, je leur ai, étant et parlant comme dit est, laissé copie du présent exploit et du jugement susdit. Dont acte, le coût est mille gourdes, Y apposé le timbre spécial requis par la loi tant sur l'original que sur la copie.

*[Handwritten signature]*  
Huissier

*Léonel Livert*  
*509-275*

*Le 6/02/18*  
*289*

*2016*

*+DS Monès*  
*PPATS Guib...*  
*Sept 2018*  
*[Handwritten initials]*

Original

10/11/15  
POUR  
50151

L'an deux mille quinze et le Toussaint dix-neuf (19) Novembre

A la requête du Ministère Public représenté par SANON Wilnorce, avocat, substitut du Commissaire du Gouvernement près le Tribunal de Première Instance des cayes, identifié au No : 0010-213-590-9, près le Tribunal de la Première Instance des cayes, agissant au nom de la loi et dans l'intérêt de la société.

J'ai Osma Jean Petit Huissier, immatriculé sur les registres du Greffe du Tribunal de Première Instance de Jérémie, Identifié au No : 004-140-963-P demeurant et domicilié en cette ville, soussigné, signifié, donné et laissé :

1-Au Sieur Jean Morose VILLENA, propriétaire, demeurant et domicilié aux Irois, en fuite, en sa demeure où étant et parlant à par personne, ainsi déclaré ;

2- au sieur Meritus BEAUBLANC alias Ti-Américain demeurant et domicilié aux Irois, en fuite, en sa demeure où étant et parlant à par personne, ainsi déclaré ;

3- au sieur Vilème Duclona, propriétaire, demeurant et domicilié aux Irois, en fuite, en sa demeure où étant et parlant à par personne, ainsi déclaré ;

4- au sieur MATHYR Kenson, propriétaire, demeurant et domicilié aux Irois, en fuite, en sa demeure, où étant et parlant à par personne, ainsi déclaré ;

5- au sieur Boileau Pierrot, propriétaire, demeurant et domicilié aux Irois, en fuite, en sa demeure où étant et parlant à par personne, ainsi déclaré ;

6- au sieur Guerson Pierre, propriétaire, demeurant et domiciliés aux Irois, en fuite, en sa demeure où étant et parlant à par personne, ainsi déclaré ;

7- au sieur France IZME, propriétaire, demeurant et domicilié aux Irois, en fuite, en sa demeure où étant et parlant à par personne, ainsi déclaré ;

8- au sieur ean Pierre Gardy, propriétaire, demeurant et domicilié aux Irois, en fuite, en sa demeure où étant et parlant à par personne, ainsi déclaré ;

9- au sieur Agnel JEAN, propriétaire, demeurant et domicilié aux Irois, en fuite, en sa demeure où étant et parlant à par personne, ainsi déclaré ;

10- au sieur ESTO Bel, propriétaire, demeurant et domicilié aux Irois, en fuite, en sa demeure où étant et parlant à par personne, ainsi déclaré ;

11- au Fleurime Sedernier, propriétaire, demeurant et domicilié aux Irois, en fuite, en sa demeure où étant et parlant à par personne, ainsi déclaré ;

12- à la Direction Générale des Impôts (DGI) présentée par Joël Bernadin, Directeur Départemental de la Grand'Anse, propriétaire, demeurant et domicilié à Jérémie en ses bureaux où étant et parlant à par personne, ainsi déclaré ;

reçu le 19/11/2015

*[Signature]*

19/11/15  
50151



13- à la porte du Tribunal de Paix de la Commune des Irois

Copie de la grosse en forme exécutoire d'un jugement rendu par le tribunal Criminel de la juridiction des cayes selon les vœux des articles 179 et 366 du code Instruction Criminel par Me Bénit NOEL en date du vendredi trois juillet deux mille quinze, dont le dispositif est ainsi conçu : « Par ces motifs, le Tribunal ordonne au Commissaire du Gouvernement de faire ce que de droit pour ces accuses comparaissent dans les dix jours à compter de la présente ordonnance, sinon ils seraient déclarés rebelles à la loi, suspendus de l'exercice des droits du citoyen ; leurs biens seront saisis la procédure par contumace sera poursuivie contre eux.

Vu qu'ils sont accusés d'assassinat et complicité d'assassinat, de coups et blessures par balle sur la personne de Judex IZME et de Nissage MARTYR et d'assassinat sur Eclessiaste Boniface, destruction des biens publics, dire ils seront pris de corps.

Ainsi Jugé et prononcé par nous, Maitre Benit Noel Doyen du Tribunal criminel, en présence de Maître Wilnorce Sanon substitut commissaire du Gouvernement assisté de Maitre Michel Charles Greffier du siege à l'audience criminelle du vendredi trois juillet deux mille quinze. An 212<sup>ème</sup> de l'Indépendance.

Il est Ordonné etc.....etc

En foi de quoi etc.....etc »

Afin qu'ils n'en ignorent et aient à s'y conformer, je leur ai Huissier sus dit et soussigné, comme dit est, soussigné, signifié, donné et laissé copie de la présente et celle de mon exploit à chacun d'eux séparément, y apposé le timbre réglementaire spécial de justice pour tous les requis par la loi. Dont acte le cout est de .....gourdes.

Pour Ordre de signifier :

Rosevelt Zamora  
....., Av.

Commissaire du Gouvernement près le Tribunal de Première Instance de Jérémie

enregistré à Jérémie le 20/11/2015  
Folio 430  
Case 4458  
Total perçu en gourdes 15  
Total perçu en lettre  
La récoignée  
No. J. Wilson Obard

Reçu par le CG.  
Me Roosevelt Zamora  
le 19/11/15



l'Huissier  
G. Pa...



Reçu le 20/11/2015  
Gerald Charles  
Juge de Paix



LIBERTÉ

ÉGALITÉ

FRATERNITÉ

RÉPUBLIQUE D'HAÏTI

AU NOM DE LA RÉPUBLIQUE

Extrait des minutes du Greffe du tribunal de  
Première Instance des Cayes

AU NOM DE LA RÉPUBLIQUE

Audience criminelle du Vendredi trois (3) juillet deux mille quinze. An 212<sup>ème</sup> de l'Indépendance. Les causes du rôle appelées et le numéro 15/0002 est retenu par le M. P. Le Ministère Public représenté par Maître Wilmerce Sayer, Substitut Commissaire du gouvernement près le tribunal de Première Instance des Cayes, la parole sollicitée et obtenue, requiert au tribunal d'ordonner au Greffier du siège de procéder à la lecture de l'acte d'accusation et l'ordonnance de renvoi. Après quoi, le tribunal constate que les accusés comparaissent libres, seulement accompagnés les agents de l'A.P.E.N.A pour les empêcher de s'évader.

Le tribunal criminel passe à l'identification du premier accusé:

Q) Quels sont vos nom, prénom, âge, profession, demeure?

Rép. - Je me nomme Léonel Libert, âgé de 15 ans, né à Les Trois, cultivateur de profession.



27) Identification pour le second accusé:  
Je me nomme Jean Louis Bel, âgé de 30 ans,  
né, les Trois <sup>ème</sup> section matador, cultivateur  
de profession.

28) Le tribunal passe à l'identification du 3<sup>ème</sup> accusé.  
Je me nomme Darcevat Monès, âgé de 35 ans, né  
aux Trois, demeurant et domicilié à Port-Au-Pin  
Maçon de profession.

49) Je me nomme Lissage Viliens âgé de 71 ans, né  
les Trois, cultivateur de profession.

50) Je me nomme Charles Louinès âgé de 36 ans, né  
les Trois y demeurant domicilié; pêcheur de profession.

Après l'identification des accusés, les avocats du  
conseil de la défense demandent actes de sa  
constitution pour assurer les moyens de défense  
de ses accusés ici présents. Le tribunal donne  
acte à la partie défenderesse.

M<sup>es</sup> Fleury Jean Dieumel, Maria Joseph, junior,  
Siméon Valet et Louis Roosevelt demandent actes  
de leur constitution pour assurer les intérêts  
de la partie civile. Le tribunal donne acte.

Sur la requête du M. P. le tribunal ordonne  
au Greffier du siège de procéder à la lecture  
du dispositif de l'arrêt avant dire droit de  
la Cour de Cassation de la République.

Le conseil de la défense demande au tribunal  
criminel d'appointer le M. P. à leur communiquer  
toutes les pièces du dossier, le tribunal donne acte  
au M. P. du fait de le communiquer.

Le M. P. représenté par Maître Wilmarce Sarron  
la parole sollicitée et obtenue fait l'exposé de  
la cause.

Le M. Public attire l'attention du tribunal sur le maire d'alors Jean Marose Vilienza qui était à la tête d'un groupe et qui semait la terreur jusqu'à tuer le sieur Boniface Ecclésiaste et Missage dont une jambe a été coupée, le M. P. fait droit à l'application de l'article 179 du C. I. C. et qui se réfère à l'article 366 du même code.

- Au nom de la République -

Vu la demande formulée par le M. P.  
Vu l'article 179 du C. I. C.

Attendu que les accusés Jean Marose Vilienza majeur demeurant et domicilié aux Trois en fuite  
24 Méritus Beaulanc alias ti-américain,  
30 Vilienza Duclonia, Martyr Kenson, Beaulot Pierre Guerson Pierre, Erance IZmé; Jean Pierre Bard, Angel Jean, Esta Bel, Michelet Noël, Fleurime se dernier, tous majeurs, demeurant et domiciliés au Trois en fuite.

Attendu que les actes ne peuvent pas rester impunis  
\* Par ces motifs, le tribunal ordonne au Commissaire du gouvernement de faire ce que de droit pour que ces accusés comparaisent dans les dix jours à compter de la présente ordonnance si non ils seraient déclarés rebelles à la loi, suspendus de l'exercice des droits du citoyen, leurs biens seront saisis la procédure par contumace sera poursuivie contre eux.

Vu qu'ils sont accusés d'assassinat et complicité d'assassinat, de coups et blessures par balles sur la personne de Judex IZmé et de Missage Martyr et d'assassinat sur Ecclésiaste Boniface, destruction des biens publics, dire qu'ils sont pris de corps.

Ainsi jugé et prononcé par nous. Maître Benoit alio

-14-

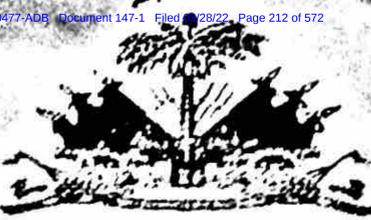
Doyen du tribunal criminel, en presence  
 de Maître Wilmarce Sarjon Substitut Commissaire  
 du gouvernement assiste de Maître Michel  
 Charles Greffier du siege à l'audience tri-  
 minelle du Vendredi trois juillet deux mille  
 quinze. An 212<sup>me</sup> de l'Indépendance.  
 Il est ordonné etc... etc  
 En foi de quoi etc... etc

Bernard Jean Pierre  
 Greffier



enregistré à Jérémie le 30 Juin 2015  
 Folio 1236  
 Case 1477 Registre 1 No 15  
 Total perçu en Chiffre \_\_\_\_\_  
 Total perçu en lettre Debit  
 Le receveur J. Wilson Charles

Judgment, No. 15/00002 (Ct. First Instance Les Cayes Apr. 30, 2018)  
[Plaintiffs\_0000318-20]



REPUBLIQUE D'HAITI



LIBERTE

EGALITE

FRATERNITE

EXTRAIT DES MINUTES DU GREFFE DU TRIBUNAL DE PREMIERE INSTANCE DES CAYES

AU NOM DE LA REPUBLIQUE

Audience Criminelle sans assistance de Jury et publique du lundi trente avril deux mille seize, An 215<sup>ème</sup> de l'Indépendance ;

L'audience Criminelle sans assistance de Jury est ouverte ;

La cause du rôle est appelé et la No : 15 / 00002 est retenu par le Ministère Public représenté par Me Wilnoce SANON, Substitut Commissaire du Gouvernement.

Le Ministère Public demande au Doyen en siège de faire appeler l'accusé Jean Morose VILLIENA ;

La Cour constate que l'accusé comparait libre seulement accompagné des Agents de la PNH pour l'empêcher de s'évader. Ensuite, Le Cour passe à l'identification de l'accusé comme suit :

Q / Quels sont vos nom, prénom, âge, profession, demeure, domicile ?

R / Je me nomme Jean Morose VILLIENA, âgé de 46 ans, né à les Irois, demeurant et domicilié aux Etat Unis d'Amérique;

Le Conseil de la défense représenté par Me LOUIS Joseph Saurel, Piterson CLERMONT, Stempouce GELUS demande acte de sa contestation pour assurer la défense de l'accusé Jean Morose VILLIENA ;

La partie Civile représentée Me LOUIS Roosevelt et Me William MACENAT. conjointement avec Me Mario JOSEPH, avocat du Barreau de Port-au-Prince, demande aussi acte de sa constitution pour assurer les intérêts de la partie victime.

Le Ministère Public demande au Doyen du Tribunal Criminel d'ordonner au Greffier en siège de donner lecture de l'arrêt de la Cour de Cassation et ceci a été faite par le greffier en siège.

Après la lecture, le Ministère Public demande la parole pour faire exposer de l'affaire. Du même coup, le Ministère Public demande à la cour de faire appeler les assignés. Ce qui a été fait en trois fois par l'huissier audiençier.

Le Tribunal Criminel a constaté qu'après avoir cités et appelés en 3 fois les plaignants, personne n'a pas comparu.

Me LOUIS Roosevelt, pour la partie civile, ayant sollicité et obtenu la parole, a sollicité du Doyen de la Cour, une remise.

L'un des avocats du conseil de la défense revint à la barre pour combattre la demande sollicitée par la partie civile.

Questions posée par le Doyen du Tribunal Criminel à l'accusé :

Q- koman ou rele ?

R Mwen rele Jean Morose VILIENA

Q- Est-ce ke ou rekonet Lessage VILIENA ?

R wi majistra, se papa m

Q- est -ce ke ou konnen de kisa yo reproche w

R - majistra, mwen pa kon anyen nan sa yo ap di yo

Q - kisa ou te kon fê Les Irois ?

R - Mwen te sansè lycé, mwen te Magistrat kominal

**MINISTERE PUBLIC, L'ACCUSE EST A VOTRE DISPOSITION :**

Q- Eske ou te konnin ta pra l gin dezod nan lycé a ?

R- Non Komisé

Q- Eske ou ka esplike nou sa k te pase a ?

R- Se pandan mwen te nan lysé a te gin you elèv ki antre nan lakou lyse a ak you zam. mwen men m kom you Magistra kominal e kom sansè lyce a, mwen te trouve mwen nan you sityasyon difisil kote you elèv ap rantre ak zam nan you lekòl, mwen te rele lapolis pou vin banou èd malerezman lapolis pat janm arive vin pote nou èd akoz yo pat gin moyen.

Q- Te gen you jijman ki te fèt déjà eske moun ki te kondane yo, yo te gin you bagay pou yo wè nan sa yo te repwoche yo ?

R- Majistra, se la jistis ki tap desidé li desidé.

Q- Eske ou te bay moun zam pou al fè dezod ?

R- Non, Majistra

Q- Eske ou te konnin ta pral gin dezod ki fè ou w te rele lapolis la ?

R- Non Majistra. Mwen pat relèl avan non, se lè dezod la komanse a mwen te fè appel lapolis.

Conseil des Avocats, l'accusé est à votre disposition :

- demande-lui pour nous, Magistrat :

Q / Est- ce ke li te bay lod pou al fè dezod Les Irois

R- Non Magistrat

Le Conseil Avocat demande acte de suite à la question posée.

Le tribunal lui en donna acte.

Requis de signer, il l'a fait avec nous et notre Greffier.

Le Tribunal déclare clos le débat particulier et du même coup, déclare ouvert les débats généraux.

**LE MINISTERE PUBLIC PLAISE AU TRIBUNAL :** Par ces motifs, qu'il plaise au Juge de la cause dire et déclarer compétent pour connaître l'affaire, déclare constant les infractions d'assassinat, tentative d'assassinat, destruction des biens qu'on avait reproché tant qu'aux hommes de bras de Jean Morose VILLIENA et par lui aussi de condamner à la même peine, que ces hommes de bras soit sept ans de prison. Ce sera droit, justice et équité.

Le Conseil de la défense, ayant sollicité et obtenu la parole a combattu la réquisition du Ministère Public ;

**PLAISE AU TRIBUNAL :** Par ces causes et motifs, voir et entendre le Tribunal Criminel déclarer non coupable le citoyen Jean Morose VILLIENA du fait à lui reprocher, ce conformément à l'article 288 du code procédure civile ; Vu qu'il n'y est concerné ni de près ni de loin. Ce sera droit.

Le Tribunal constate que le Conseil de la défense a eu la parole en dernier, le Tribunal constate aussi que la partie civile n'a pas conclus, ni formulé les revendications relatives aux dommages-et-intérêt bien avant la poursuite des débats généraux.

**VU LES PIECES DU DOSSIER :** Vu l'ordonnance de renvoi du cabinet d'Instruction ; Vu l'assignation ; Vu l'ordonnance par contumace contre l'accusé absent et autres ;

Oui le Greffier en la lecture des pièces du dossier ; Oui l'accusé dans son interrogatoire ; Oui le greffier en la lecture des pièces du dossier ; Oui l'accusé dans son interrogatoire ;

Oui le Ministère Public dans l'exposé des faits, dans ses conclusions, dans sa réquisition de peine ;

Oui le Conseil de la défense ayant eu la parole en dernier dans le développement de ses moyens et dans ses conclusions ;



Vu les textes régissant à la matière :

Attendu que par ordonnance du Cabinet d'Instruction l'inculpé Jean Morose VILIENA a été déféré par devant le Tribunal Criminel siégeant sans assistance de Jury pour y être jugé sur la prévention de destruction de maison et d'attentat au préjudice de Nissage MATYR, Jules YZEME,

Attendu qu'à l'audience de juillet 2015. l'accusé Jean Morose VILLIENA absent lors de la ..... a été l'objet d'une ordonnance par contumace rendu par le Doyen du Tribunal Criminel ;

Attendu que. conformément à l'article 366 et suivant du Code d'Instruction Criminelle. l'accusé VILLIENA Jean Morose condamné par contumace demeurant aux Etats Unis se présente lui-même c'est-à-dire sans contrainte par devant la juridiction de jugement siégeant sans assistance de Jury aux fins de l'inscription de cette affaire le concernant :

Attendu qu'il est constant en état d'un élément du dossier dans les débats que l'accusé Jean Morose VILLIENA n'a pas commis les faits qui lui sont reprochés Vu que l'accusation n'est pas fondée, le déclare non coupable ;

Attendu que le Ministère Public requiert contre le nommé Jean Viliena MOROSE une peine de sept ans, conformément aux articles 19, 240.382 Code de procédure Civile ;

Attendu que le Conseil de la défense, dans sa plaidoirie. a requis pour le tribunal criminel de dire et déclarer l'accusé Jean Morose VILLIENA " non coupable " des faits qui lui sont reprochée et d'appliquer en sa faveur l'article 288 du Code d'Instruction Criminelle de Jean Vandal ainsi conçu ;

" Lorsque l'accusé aura été déclaré non coupable, le Tribunal prononcera qu'il est acquitté de l'accusation et ordonnera qu'il soit mise en liberté, s'il n'est retenu pour autre cause "

3797  
8571

**PAR CES MOTIOFS,** le Ministère Public entendu. Le tribunal criminel faisant droit aux conclusions du conseil de la défense, reconnaitre Jean Morose VILLIENA, âgé de 46 ans, économiste de profession, né à les Irois, demeurant et domicilié aux Etat Unis d'Amérique " non coupable " et dit qu'il est acquitté de l'accusation .-

Ainsi jugé et prononcé par Nous, Me Michel Williams DESTINE, Doyen de l'audience criminelle, en présence de Me Wilnoce SANON, Substitut Commissaire du Gouvernement, assisté de Venise JOSEPH, Willy MUSCADIN, Ernst DUVERSEAU, Greffiers, en l'audience Criminelle sans assistance de Jury, du trente avril deux mille dix-huit, An 215<sup>ème</sup> de l'Indépendance.-

Il est ordonné à tous Huissier sur ce requis de mettre le présent jugement à exécution, aux officiers du Ministère Public près les Tribunaux Civils d'y tenir la main. à tous Commandants et autres Officiers de la force Publique d'y prêter main forte lorsqu'ils en seront légalement requis.

En foi de quoi, la minute du présent jugement est signée du Juge et Greffiers susdits.

**COLLATIONNE CONFORME A LA MINUTE POUR EXPEDITION DELIVREE.**

 Me Jean Planel FORTUNE  
Greffier en Chef

Judgment, No. 736/08 (Civ. Ct. Jérémie Oct. 25, 2010) [Plaintiffs\_0000647-48]



RÉPUBLIQUE D'HAÏTI

LIBERTÉ

ÉGALITÉ

FRATERNITÉ

AU NOM DE LA RÉPUBLIQUE

Extrait des minutes du greffe de Tribunal civil de JEREMIE./

AU NOM DE LA REPUBLIQUE

Le Tribunal civil de JEREMIE, competemment reuni ens son Palais de Justice a rendu en audience publique et en ses attributions criminelles le jugement:

De l'Expose ci-dessous, il resulte que le Tribunal doit resoudre les questions suivantes:

Crime d'assassinat et complicité d'assassinat sur la personne de Boniface Ecclesiaste, de destruction de bien public au prejudice de la Communauté des Irois, coups et blessures par balles sur Jude Isme et Nissage Martyr.-

PAR CES MOTIFS.- Le Tribunal, apres avoir delibere, declare que les nommes 1) Lifaite Livert, age de 37 ans, demeurant et domicile a Galette localite depe dant des Irois; 2) Mones Dorcena, age de 28 ans, macon, de profession, demeurant a Port-au-Prince et domicile aux Irois; 3) Louines Charles, age de 28 a demeurant et domicile aux Irois; 4) Jean Louis Bell, age de 24 ans, ne a Mat dor localite des Irois; 5) Michelet Noel, ne aux Irois, age de 29 ans, cultiv teur, 6) Nissage Viliena, age de 66 ans, ne a la quatrieme section de l'Anse d'hainault sont coupables de complicité d'assassinat sur la personne de Boni-face Ecclesiaste, ~~sent-coupables-de-complicité-d'assassinat~~ de destruction d bien public au prejudice de la Communauté des Irois, de coups et blessures pa balles sur Judes Iseme et Nissage Martyr crime prevu et puni par les articles 44, 45, 241, et 254 et suivant du Code Penal, En consence les condamne a neufv( ans de travaux forces sans prejudice de la loi de la loi sur la prison preven tive et conformement aux articles 144, 450 24, 254, 350 et 382 du Code Penal 1 quels articles ont ete lus a haute voix par le juge en siege les condamne sol dairement a six cent cinquante mille (650.000) gourdes de dommages interets au prejudice de la partie civile, valeur qui sera reparti comme suit: 250.000 go rdes a Boniface David; 250.000. gourdes a Nissage Martyr; 150.000. gourdes a Lu ders Iseme et faisant application des articles du Code Penal, les condamne solidairement aux frais et depens envers l'Etat alloue au Greffe a la somme de cinq mille cinq cent gourdes et ce compris le cout du jugement, dit qu'en cas de non paiement de dommages-interets et frais sus diques les condamnes sub ront une annee supplementaire de prison, quant aux fuyards la procedure par co tumace sera enclenchee contre eux et, ce, conformement a la loi pour que de tel actes ne se reproduisent pas ce qui est nuisible a la societe.-

Ainsi juge et prononce par Nous, Yvan Arnoux, Doyen au Tribunal Civil de Jerem en audience publique du Lundi vingt cinq Octobre deux mille dix en presence de Me. Jean Kesner Numa, Commissaire du Gouvernement occupant le siege du Minis tere public avec l'assistance du sieur Renel Justin, Greffier du siege.-

Il est ordonne a tous huissiers sur ce requis de mettre le present jugement a execution; aux Officiers du ministere public pres les tribunaux civils d'y ten ir la main; a tous commandants et autres agents de la force publique d'y pre ter main forte lorsqu'ils en seroient legalement requis.-

En foi de quoi la minute du present jugement a ete signee du Doyen Yvan Arnoux et du Greffier Renel Justin.-

Ainsi signe : Yvan Arnoux, Doyen; Renel Justin, Greffier.

Collationné;

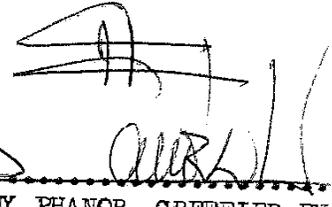
Pour expedition conforme:

Six mots rayes nuls.-

Jean RORY PHANOR, Greffier  
en Chef./

AU BAS DE LA MINUTE EST ECRIT:  
ENREGISTRE A LA DIRECTION GENERALE DES IMPOTS:  
ACTES JUDICIAIRES NO. DEBET 14;  
le 15 NOVEMBRE 2.010; CASE 4296; FOLIO 497;  
(S) JN. WILSON CHARLES, INSPECTEUR.-

COLLATIONNEE:  
POUR EXPEDITION CONFIRME:



JEAN RONY PHANOR, GREFFIER EN  
CHEF./



[Faint, illegible text, possibly bleed-through from the reverse side of the page]

Minutes of Incident Report (J.P. Ct. Les Irois Dec. 5, 2011) (French original)  
[Plaintiffs\_0000316]



RÉPUBLIQUE D'HAÏTI

MINISTÈRE DE LA JUSTICE  
ET DE LA SÉCURITÉ PUBLIQUE

TRIBUNAL DE PAIX.....  
Des IROIS RAPPORT D'INCIDENT (Procès Verbal)

No. .... L'an deux huit en 105 eme de l'indépendance et le  
08 Avril 2008, nous Me Agnel ROMEUS juge de Paix de la commune des Irois , officier de la police  
judiciaire , auxiliaire du Commissaire du Gouvernement près le Tribunal de Première Instance de  
Jérémie , assisté de notre greffier Lorena Wilbert. Avons recueillis ce qui suit ;

Le Mardi 08 Avril 2008 , Le Maire de la ville Jean Morose Viliena escorté d'un commando aux environs  
de 1h50 de l'après midi , ce troupe conduit par le maire armé jusqu'au x dents terrorise la population  
en tirant à bout portant sur tout ce qui bouge et plusieurs personnes ont été victimes parmi lesquelles  
ont peut retenir Juders ISEME jeune garçon à cette époque âgé de 21 ans demeurant et domicilié au  
centre ville plus précisément au boulevard de Pont Piguy son œil droit crevé par une projectile .

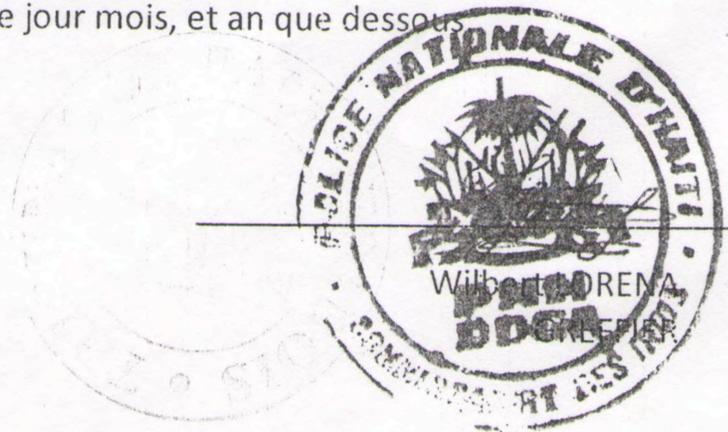
L'incident a eu lieu à la station de Radio VISION NOUVELLE une station d'après les riverains qui dénonce  
à travers une émission la façon dont le maire gère la ville avec ses troupes qui sèment la terreur, après  
**Juders ISEME** vient le nommé **Nissage MARTHYR** dont la station de la radio logeait chez lui, il perd son  
pied droit amputé après avoir reçu une projectile dans la jambe , suivi de **Ecclésiaste BONIFACE** Tué à la  
place de son frère aîné il s'agit de David BONIFACE lui aussi dénonce le traitement inhumain subi aux  
mains d u Maire Jean Morose Viliena.

L'année suivante soit le 29 Octobre 2009, le même Commando ayant à sa tête le Maire Jean Morose  
Viliena fait incendier plus de 40 maisons dans lesquelles les familles suscitées telles que ; ISEME,  
MARTHYR ET BONIFACE n'ont été épargné.'

Le dernier coup dure ce fut le 22 Novembre 2011 , une branche de ce même Commando a mis le feu à la  
toute dernière maison de la famille ISEME à l'intérieur de cette maison incendiée se trouve Mme  
Nerrelie Bell grande mere de ISEME Juders calcinée sous le feu, une foule immense impuissante devant  
le feu gigantesque , dont la famille ISEME n'a rien sauvé tout a été brulé.

Le Tribunal de Paix des Irois, invite les autorités haïtiennes et les organismes internationaux de bien  
vouloir prêter mains fortes aux familles (**ISEME- MARTHYR ET BONIFACE**) ils ont besoin vraiment d'aide.  
En foi de quoi, ce présent lui est délivré pour servir et valoir ce que de Droit -  
Dont Acte, fait et dressé le présent rapport / procès verbal, le jour mois, et an que dessous

Fait à la Justice des Irois , le 05 Décembre 2011.



Minutes of Incident Report (J.P. Ct. Les Irois Dec. 5, 2011) (English translations)  
[VIL0016-17, VIL0032]

*[Coat of arms of the Republic of Haiti]*

**MINISTRY OF JUSTICE  
AND OF PUBLIC SECURITY**

MAGISTRATE'S COURT.....  
of Les Irois INCIDENT REPORT (Official Report)

No. ....

In the year two thousand eight in the 105th Year of independence and on April 8, 2008, we, Attorney Agnel ROMEUS Justice of the Peace the municipality of Les Irois, officer of the judicial police, auxiliary of the Superintendent of the Government before the High Court of Jérémie, accompanied by our Clerk Lorena Wilbert. We have gathered to us the following:

On Tuesday, April 8, 2008, the town Mayor Jean Morose Viliena, escorted by a commando squad around 1:50 p.m., the same troop led by the mayor and armed to the teeth, terrorized the population, firing at point-blank range at everything that moved. Several people were killed, among whom (illegible) can be singled out one Juders ISEME, a 21-year-old young man domiciled in the center of town on the Boulevard de Pont Piguy who was shot in the right eye.

The incident occurred at Radio Vision Nouvelle, a station which, according to the local people, used its broadcasts to denounce the mayor's administration of the town with his troops spreading terror. After Juders ISEME had just appointed Nissage MARTHYR, at whose home the radio station was lodged, his right foot was amputated after being shot in the leg. Ecclésiaste BONIFACE was killed in the place of his older brother David BONIFACE who himself also denounced the inhuman treatment suffered at the hands of Mayor Jean Morose Viliena.

The following year, on October 29, 2009, the same commando squad headed by Mayor Jean Morose Viliena set fire to more than 40 houses in which above-cited families such as the Isemes, Marthys and Bonifaces were not spared.

The final heavy blow came on November 22, 2011 when a branch of the same commando squad set fire to the very last house of the Iseme family. Inside that house was Madame Nerrelie Bell, grandmother of Juders Iseme; she burned to death in the flames which a crowd watched the gigantic fire helplessly. The Iseme family was unable to save anything, all was burned up.

The Magistrate's Court of Les Irois invites Haitian authorities and international organization to kindly assist the Iseme, Marthyr and Boniface families. They desperately need help. In witness whereof, this letter is delivered for all legal intents and purposes and to whom it may concern -- including the official incident report on the day, month and year entered below.

Done at the court of Les Irois on December 5, 2011.

LOWER RIGHT: Partly legible stamp of the Haitian National Police over a partly legible name, likely that of Lorena Wilbert, the Court Clerk of Jérémie, Haiti.





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STATE OF: *Massachusetts*

COUNTY OF: *Suffolk*

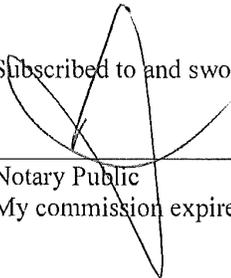
**CERTIFICATE OF ACCURACY**

Natalia Taylor, on behalf of Language Connections, certifies:

1. That our translator(s) are proficient in both the **French** and the **English** languages.
2. That we have made the attached translation of the below mentioned original document(s) from **French** into **English** and hereby certify that the same is a true and complete translation to the best of our translator(s) knowledge, ability and belief.
3. Document name:
  - *Ministere de la Justice et de la Securite Publique 12.05.2011*

Signature: 

Subscribed to and sworn before me this 7<sup>th</sup> day of February, 2018 by Natalia Taylor.

  
Notary Public  
My commission expires: 1 Dec 2020







REPUBLIC OF HAITI  
MINISTRY OF JUSTICE  
AND PUBLIC SAFETY

DISTRICT CIVIL COURT \_\_\_\_\_ of IROIS \_\_\_\_\_ INCIDENT REPORT (Statement)

No..... The year two eight in the 105<sup>th</sup> of independence and April 8, 2008, we Agnel ROMEUS, Esq., district judge of the town of Irois, senior law enforcement officer, assistant to the government commissioner with the Court of First Instance of Jérémie, assisted by our registrar Lorena Wilbert. We have collected the following;

On Tuesday, April 8, 2008, the town's mayor, Jean Morose Viliena, escorted by a commando at approximately 1:50 in the afternoon, this troop led by the mayor [and] armed to the teeth terrorized the population by shooting at point-blank range everything that moved and several people were victims, including Juders ISEMÉ, a young 21 year-old boy at the time residing and domiciled in the center city, specifically on boulevard de Pont Piguy. His right eye was punctured by a projectile.

The incident took place at the VISION NOUVELLE radio station, which according to residents denounces through a broadcast the manner in which the mayor runs the city with his troops that sow terror. After *Juders ISEMÉ* comes *Nissage MARTHYR*, in whose home the radio station was located. He lost his right foot, which was amputated after he was hit in the leg by a projectile, followed by *Eclisaste BONIFACE* who was killed in place of his older brother, David BONIFACE, who also denounces the inhumane treatment suffered at the hands of Mayor Jean Morose Viliena.

The next year, i.e. October 29, 2009, the same commando led by Mayor Jean Morose Viliena set fire to over 40 homes in which the aforementioned families: ISEME, MARTHYR AND BONIFACE were saved.

The last hard blow was on November 22, 2011, [when] a branch of this same commando set fire to the very last home of the ISEME family. Inside this burnt home, they found Ms. Nerrelie Bell, Juders ISEME's grandmother, burnt to ashes, a vast crowd powerless in the face of the immense fire, from which the ISEME family saved nothing. Everything was burnt.

The Irois District Civil Court asks the Haitian authorities and international organizations to please support the families (*ISEME-MARTHYR AND BONIFACE*). They are in true need of assistance. In witness whereof, this letter is delivered to you for all due legal purposes.

Duly noted, this report/statement was drawn up and prepared on the day, month and year below.

Executed in the Irois Judicial System, December 5, 2011

[round stamp:]

HAITI NATIONAL POLICE



Wilbert, LORENA

[illegible]

Minutes of the Oath of Office (J.P. Ct. Les Irois Feb. 11, 2011) [VIL0013-15,  
VIL0031]

REPUBLIC OF HAITI

LIBERTY

EQUALITY

FRATERNITY

IN THE NAME OF THE REPUBLIC

*[Stamp: Magistrate's Court of the municipality of Les Irois]*

**Excerpt of the minutes of the clerk of the Magistrate's Court of the municipality of Les Irois**

**IN THE NAME OF THE REPUBLIC**

MINUTES OF THE OATH OF OFFICE

In the year two thousand eleven and in the 207th Year of independence and on Friday, February 4 at 11 a.m.

Before us, Bel Saint Jean, Justice of the Peace the municipality of Les Irois, officer of the judicial police auxiliary of the superintendent of the Government before the High Court of this jurisdiction, accompanied by our clerk Lebon Rodane-Marc.

Appearing in court, citizen Romeus Agnel, of Haitian nationality, 33 years old, tax identification number 008-261-538-7.

Who showed us a letter dated February 2, 2011 written by the superintendent of the Government before the Magistrate's Court of Jeremie asking to receive the oath of office of Mar Romeus Agnel as substitute justice of the peace of the municipality of Les Irois in virtue of a letter from the Ministry of Justice dated January 31 (illegible). I have the privilege of informing you on behalf of the Ministry that he has (illegible) chosen you as substitute justice of the peace in the magistrate's court of Les Irois.

Your appointment is effective as of the date of your swearing in.  
I wish you success in your tasks.

Kindly accept, Sir, with my compliments, the expression of my best regards.

Minister of Justice Paul Denis.

After which the oath of office required by law was duly administered.

I swear to respect the rights of my fellow citizens and to perform my duties toward the government and toward all persons subject to trial.

After which we drew up and concluded this certificate of swearing in for all pertinent purposes under the law.

Done in our court house on February 11, 2011.

Signed by The Justice of the Peace Attorney Bel Saint Jean and the Clerk Rodane-Marc Lebon.

Certified true copy

*[Signature]*

Mar Morena Wilfrid Court Clerk

For Rodane-Marc Lebon Court Clerk

*[Signature]*

*[Stamp: Magistrate's Court of the municipality of Les Irois]*

Anyone making private use of this form will be liable to a fine of one hundred gourdes (Law of August 6, 1919)



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STATE OF: *Massachusetts*

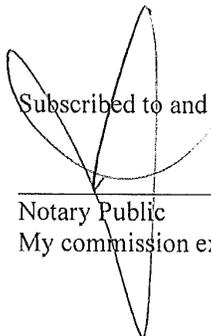
COUNTY OF: *Suffolk*

**CERTIFICATE OF ACCURACY**

Natalia Taylor, on behalf of Language Connections, certifies:

1. That our translator(s) are proficient in both the **French** and the **English** languages.
2. That we have made the attached translation of the below mentioned original document(s) from **French** into **English** and hereby certify that the same is a true and complete translation to the best of our translator(s) knowledge, ability and belief.
3. Document name:
  - Proces - Verbal De Prestation De Serment

Signature: 



Subscribed to and sworn before me this 7<sup>th</sup> day of February, 2018 by Natalia Taylor.

Notary Public  
My commission expires: 4 Dec 2020





RÉPUBLIQUE D'HAÏTI

LIBERTÉ

ÉGALITÉ

FRATERNITÉ

AU NOM DE LA RÉPUBLIQUE



Extrait des minutes du greffe de Tribunal de paix  
de la commune des Irois

AU NOM DE LA REPUBLIQUE

PROCES -VERBAL DE PRESENTATION DE SERMENT

L'An deux mille onze An 207eme de l'Independance et le vendredi 4 fevrier a onze heures du matin,.

Par devant nous Bel Saint Jean juge de paix titulaire de la commu des Irois, officier de la police judiciaire auxiliaire du commissai du gouvernement pres du tribunal de ce ressort, assiste de notre gr ffier Lebon Rodane-Marc.

Etant a notre siege le citoyen Romeus Agnel de nationalite Haitien age de 33 ans, identifie au nif 008-261-539-7.

Nous a presente une Lettre date du 02 fevrier 2011 par le commiss du gouvernement pres du tribunal de premier Instance de Jeremie de bien vouloir recevoir la prestation de serment de Mer Romeus Agnel comme juge de paix suppléant de la commune des Irois en vertu d'ur correspondance du Ministère de la justice en date du 31 janvier 2 J'ai l'avantage de vous informer par delegation du Ministre il a e fait choix de vous comme juge de paix suppléant aux tribunal de pe des Irois.

Votre nomination est effective a partir de la date de votre preste de serment.

Je vous souhaite donc une bonne et fructueuse besogne.

Recevez Monsieur avec mes compliments avec l'assurance de ma conc deration distinguee.

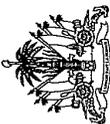
Ministre de la justice Paul Denis.

Après quoi le serment est exige par la loi lui a ete decerne. Je jure de respecter les droits de mes concitoyens et de faire mes devoirs en vers le gouvernement et a tous mes justiciables.

Après quoi nous avons rediges et clos ce present proces-verbal de prestation de serment pour servir et valoir ce que de@ droit.

Fait en notre Hotel de justice le onze fevrier 2011.

Ainsi signe le juge de paix Titulaire Me Bel Saint Jean et le Greffier Rodane-Marc Lebon.



Pour copie conforme

Mer Lorena Wilfrid Greffier  
Four Rodane-Marc Lebon Greffier



Quiconque aura fait un usage privé de cette forme sera passible d'une amende de cent gourdes. (Loi du 6 Août 1919)



Notice and Order (J.P. Ct. Les Cayes July 17, 2017) [VIL0018-19, VIL0028]



Stamp [illegible]

LIBERTY

EQUALITY

FRATERNITY

REPUBLIC OF HAITI

MAGISTRAT E'S COURT OF LES CAYES

EXTRACT FROM THE RECORDS OF THE MAGISTRATE'S COURT OF LES CAYES

In the year two thousand seventeen and on Monday, July 7 at 1:51 p.m. In the 214th Year of Independence. -

We, Attorney Modler CADET, Magistrate, Substitute Justice of the Peace in the municipality of Les Cayes accompanied by Attorney Abner ALEXANDRE, lawyer, Court Clerk. -

Upon the verbal petition of citizen VILIENA Jean Morose, identified by his Haitian passport and by his numeric tax identification: PP3091474 et 004-002-135-0, residing in the United States of America and domiciled in Les Irois, Grand'Anse, to the effect of transporting us to the High Court of Les Cayes in order to note his presence dated Thursday July 6, 2017 by citizen Osna Jean Petit, bailiff and process server of the High Court of Jérémie in order to appear before the High Court in Les Cayes located at No. 5 Rue du Quai, Court House, conducting a criminal bench trial on Monday, July 17 at 10 a.m. Before the Dean or some other Judge designated by the latter and to pursue according to all other subsequent sessions of the said court until judgment in the case heard as set forth.

Leading to this petition, we transported ourselves to the premises, accompanied by the petitioner, by our Clerk and by other persons appearing voluntarily. Having arrived, the petitioner showed us his Haitian passport; we observed a red seal stamped on it which contained the following information: Ministry of the Interior and of Territorial Collectives and of Airport Emigration of Port-au-Prince 46 Immigration Service 1046. Entered on July 14, 2017, MICT. DIE. We then observed a notice displayed on the wall of the aforesaid Court, reading as follows:

National Association of Haitian Court Clerks / ANAGH

NOTICE

The National Association of Haitian Court Clerks (ANAGH) notifies magistrates, lawyers, the general public and particularly the chiefs of jurisdiction that the court clerks are on strike in response to the refusal of state authorities to take into account their principal demands.

The Committee.

Upon seeing this, the petitioner declared to us the following: Magistrate, I have received a summons to appear in the court of first instance of Les Cayes in a hearing which was supposed to begin at 10 a.m. In view of the strike by court clerks, the hearing cannot take place. That is why I petition you to take note of my presence in Court today. Considering that I live in the United States of America and that I have to return there very soon, despite this fact I still remain available to the court in order to positively respond to any summons whatsoever. -

Required to sign, he did so. S/ VILIENA Jean Morose. -

In witness whereof, we have drawn up and concluded these minutes on the aforesaid date; the latter is signed by us, the petitioner and by our Clerk. -

So signed: The Justice of the Peace, Attorney Modler CADET, the Court Clerk, Attorney Abner ALEXANDRE and the petitioner, VILIENA Jean Morose. -

COLLATED CERTIFIED TRUE COPY ACCORDING TO THE MINUTES

[Signature]

Attorney Abner ALEXANDRE, lawyer  
Court Clerk

Read and approved by:

[Signature]

Attorney Modler CADET, Magistrate  
S/Justice of the peace of Les Cayes. -

Stamp [illegible]



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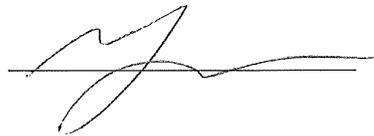
STATE OF: *Massachusetts*

COUNTY OF: *Suffolk*

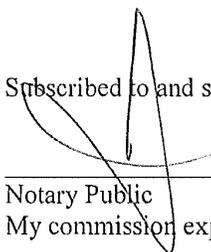
**CERTIFICATE OF ACCURACY**

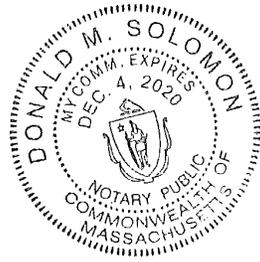
Natalia Taylor, on behalf of Language Connections, certifies:

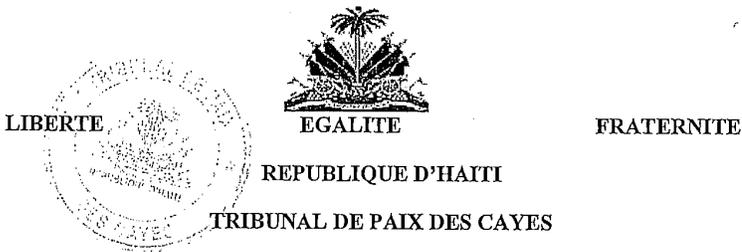
1. That our translator(s) are proficient in both the **French** and the **English** languages.
2. That we have made the attached translation of the below mentioned original document(s) from **French** into **English** and hereby certify that the same is a true and complete translation to the best of our translator(s) knowledge, ability and belief.
3. Document name:
  - Extrait Des Minutes Du Greffe Du Tribunal De Paix Des Cayes

Signature: 

Subscribed to and sworn before me this 27<sup>th</sup> day of February, 2018 by Natalia Taylor.

  
\_\_\_\_\_  
Notary Public  
My commission expires: 4 Dec 2020





**EXTRAIT DES MINUTES DU GREFFE DU TRIBUNAL DE PAIX DES CAYES**

L'An deux mille dix-sept et le lundi dix-sept juillet à une heures cinquante et une minute de l'après-midi, An 214° de l'Indépendance.-

Nous, Me. Modler CADET, Mag, Suppléant Juge de Paix de la commune des Cayes, assisté de Me Abner ALEXANDRE, av, Greffier.-

Sur la requisition verbale du citoyen VILIENA Jean Morose, identifié par son passeport haïtien et par son identité fiscale aux numéros : PP3091474 et 004-002-135-0, demeurant aux Etats Unis d'Amérique et domicilié à Les Irois, Grand 'Anse; à l'effet de nous transporter au Tribunal de Première Instance des Cayes en vue de constater sa présence vu qu'une citation lui a été signifiée en date du jeudi six juillet 2017 par le citoyen Osna Jean Petit, Huissier du Tribunal de Première Instance de Jérémie afin de comparaître au TPI/Cayes sis au No : 5 de la rue du Quai, Palais de Justice, siégeant en audience publique en ses attributions criminelles sans assistance de Jury le lundi dix-sept juillet à 10 h du matin par devant le Doyen ou tel autre Juge désigné par ce dernier et à suivre au besoin de toutes les autres audiences subséquentes dudit Tribunal jusqu'au jugement de la cause pour être entendu comme accusé.-

Donnant suite à cette réquisition, nous nous sommes transportés sur les lieux, accompagnés du requérant, de notre Greffier et d'autres personnes volontairement comparues. Y étant arrivés, le requérant nous a présenté son passeport haïtien, avons vu et constaté là-dedans un sceau en rouge qui y est apposé, lequel contenant les informations suivantes : \*Ministère de l'Intérieur et des Collectivités Territoriales\* et de l'Emigration\*Aéroport de Port-Au-Prince 46 Direction de l'Immigration 1046. Entrée, Jul 14 2017, MICT. DIE. Avons vu et constaté ensuite un avis affiché sur le mur dudit Tribunal dont le libellé est ainsi conçu :

Association Nationale des Greffiers Haïtiens/ANAGH

**AVIS**

L'Association Nationale des Greffiers Haïtiens (ANAGH) avise les Magistrats, Avocats, le public en général et les chefs de juridictions en particulier que les greffiers sont en grève suite au refus des autorités étatiques de prendre en compte leurs principales revendications.

Le Comité.

Après notre constat matériel, le requérant nous a déclaré ce qui suit : Magistrat, j'avais reçu une citation pour me présenter au tribunal de Première Instance des Cayes à l'audience qui devait être tenue à dix heures ce matin. Vu la grève des greffiers l'audience n'a pas pu avoir lieu. Voilà pourquoi je vous ai requis pour constater ma présence au Tribunal ce jourd'hui. Compte tenu que j'habite aux Etats Unis d'Amérique et je dois y retourner très bientôt, de ce fait je reste toujours à la disposition de la justice d'y répondre positivement à n'importe quelle convocation.-

Requis de signer, il l'a fait. S/ VILIENA Jean Morose.-

De tout quoi, avons dressé et clos ce présent procès- verbal de constat à la date susdite ; lequel est signé de nous, du requérant et de notre Greffier.-

Ainsi signé : Le Juge de Paix, Me. Modler CADET, le Greffier, Me Abner ALEXANDRE et le requérant, VILIENA Jean Morose.-

COLLATIONNEE COPIE CONFORME A LA MINUTE POUR EXPEDITION DELIVREE.

Vu et approuvé par :

*Me. Modler CADET*  
Me. Modler CADET, Mag  
S/Juge de Paix des Cayes.-

*Me Abner ALEXANDRE*  
Me Abner ALEXANDRE, av  
Greffier

Quiconque aura fait un usage privé de cette forme sera passible d'une amende de cent gourdes (Loi du 6 Aout 1919)

Notice of Appeal (Civ. Ct. Jérémie Aug. 14, 2013) [Plaintiffs\_0000042]



LIBERTÉ

ÉGALITÉ

FRATERNITÉ

RÉPUBLIQUE D'HAÏTI

AU NOM DE LA RÉPUBLIQUE

Extrait des minutes du Greffe du Tribunal civil de Jérémie./

AU NOM DE LA RÉPUBLIQUE

L'an deux mille treize, au 21ème de l'Indépendance et le mercredi quatorze Aout à une heure trente deux minutes de l'après-midi.-
Étant au Greffe du Tribunal civil de Jérémie et par devant Nous, Jean Kory PHANOR, Greffier en Chef de ce Tribunal, identifié au No. 001-150-406-4 sous-igno;

Ont comparu les nommes Antoine Kennel et Boniface David, propriétaires demeurant et domiciliés aux Irois, identifiés respectivement aux Nos. 00-00-99-1960-05-00002 et 00-00-99-1981-01-00007 unis d'un mandat notarie délivré en l'honneur du Notaire Jean Claude Clairmont de Jérémie sur requésition des nommes Logis Frédéric et Hissage Marthyr délivré en date du 14 Aout 2013 propriétaires, demeurant et domiciliés aux Irois, accompagnés de leur avocat Me. Mercier Josma du barreau de Jérémie, identifié, patente et imposé au revenu aux Nos. 001-150-194-1; A-204038 et A-204041B avec élection de domicile de son avocat sie à Jérémie, rue Eugène Margron No. 64.- Lesquels nous déclarèrent qu'ils se pourvoient en Cassation contre le jugement du tribunal civil de Jérémie rendu en ses attributions criminelles, sans assistance de Jury, en date du mardi treize Aout deux mille treize. En conséquence, les sus nommes déclarent qu'ils se pourvoient en Cassation contre le jugement sus dit qui leur cause préjudice à leurs droits et intérêts.-

Ils se réservant les pourvoyants de fournir les moyens à l'appui de leur demande dans le délai légal.-

De laquelle comparution et déclaration les pourvoyants ont requis acte que nous leur avons octroyé.-

Requis de signer, après lecture, ils l'ont fait avec Nous et leur avocat.-

Ainsi signé: Antoine Kennel, Boniface David, Me. Mercier Josma, Avocat, et Jean Kory Phanor, Greffier en Chef.-

Collationné;
Pour expédition conforme:

Quatre notes retouchées bonis

Jean Kory PHANOR, Greffier en Chef./

AU BAS DE LA MINUTE EST ÉCRIT:
Enregistre à Jérémie le 14 Aout 2013;
Folio 485; Case 4760 registre Y No 39;
Total perçu en chiffre 7 gdes; et Total perçu en lettre sept gdes et 5; (5)
Le Receveur.-

Collationné;
Pour copie conforme:

Jean Kory PHANOR, Greffier en Chef./

Opening Statement, *Boniface v. Viliena*, No. 17-cv-10477-ADB (D. Mass. Sept. 7, 2017) [VIL0029-30]

**OPENING STATEMENT**

**BONIFACE v. VILIENA**

I would like to read this statement (which was prepared with the help of a lawyer) to the court.

As the court is aware, this case is brought under several special statutes and involves actions that took place in Haiti. These statutes are very complicated.

The plaintiffs are represented by Dentons and by the Center for Justice and Accountability. Dentons is a giant law firm with about 7700 lawyers in offices in about 70 countries. CJA is an organization that has extensive experience litigating cases like this all over the country. Its budget is about \$5 million dollars.

I was born in Haiti. My primary language is French. I know enough English to get by, and get an associate's degree. However, as you can tell, my English is not very good even for basic communications. In addition, I have no training or understanding of law. I have no money.

In other words, if I am forced to represent myself in this case, there is no chance for me to receive justice. I am innocent of these charges, but without a good lawyer, there can be no question of what the final result will be.

I have spoken to a lawyer about this case. He thinks it would be extremely time-consuming and expensive. Just the expenses of travel and depositions would be very expensive. He is a sole lawyer and believes that Dentons would overwhelm his resources with discovery and motion practice. He told me that he believes, based on their settlement offer of thirty



million dollars, combined with false statements to me about the confidentiality of that order, that they have no interest in settling this case. In fact, he does not believe that they even have any interest in getting money for the plaintiffs; rather, he believes that their goal is to make an example of me, whether or not the charges against me are true or false. He believes that there might be various motions that should be brought for me, but that he has no experience with these statutes so he would have to do a lot of research to prepare them. He told me that he would be willing to represent me but that he cannot do it pro bono. I cannot afford to pay him even at a reduced rate; I could not even pay for the probable expenses.

I know this court is concerned with justice, but I don't know what you can do to make sure that justice is done. I don't know if the court could pay my lawyer. I don't know if it can tell Dentons or CJA to pay for a lawyer for me. I don't know if you can send the case to Haiti which has its own courts and where all the witnesses are. But I do know that if this case goes on like it is now, with the plaintiffs represented by two organizations with vast resources against me, with no resources, there is no chance that justice can prevail. I ask you to make sure that I, like the plaintiffs, have a real chance for justice.

Thank you.

Transcript of Deposition of Jean Morose Viliena, *Boniface v. Viliena*, No. 17-cv-10477-ADB (D. Mass. Nov. 1, 2021)

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

CASE NO.: 1:17-cv-10477-ADB

DAVID BONIFACE, NISSANDERE  
MARTYR, and JUDERS YSEME,

Plaintiffs,

vs.

JEAN MOROSE VILIANA (a.k.a.  
JEAN MOROSE VILLIANA),  
Defendant.

-----/

Videotaped

Deposition of: JEAN MOROSE VILIANA

Date Taken: November 1, 2021

Time: 10:03 a.m. - 5:17 p.m.

Taken By: The Plaintiffs

Location: Via Videoconference

Reported By: Emily W. Andersen, RMR CRR FPR  
Stenograph Shorthand Reporter  
and Notary Public, State of  
Florida at Large

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A P P E A R A N C E S:

Bonnie Lau, Esquire (Via Videoconference)  
Benjamin Kagel, Esquire (Via Videoconference)  
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Blau@mofo.com  
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(617) 235-6802  
philip.oconnelljr@dentons.com

Daniel McLaughlin, Esquire (Via Videoconference)  
David Maxson Harris, Fellow  
Center For Justice and Accountability  
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San Francisco, California 94102  
(415) 544-0444  
Dmclaughlin@cja.org  
On behalf of the Plaintiffs,

Peter J. Haley, Esquire (Via Videoconference)  
Nelson Mullins Riley & Scarborough LLP  
One Financial Center  
Suite 3500  
Boston, Massachusetts 02111  
(617) 217-4714  
Peter.haley@nelsonmullins.com

On behalf of the Defendant.

Also Present:  
Michael Abarca, Videographer  
Daniel Tillias, Interpreter  
Billy Pinera Elve, Interpreter  
Nicole Phillips, Check Interpreter

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I N D E X

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S T I P U L A T I O N S

It is hereby stipulated by and between counsel for the respective parties that the reading and signing of the deposition be reserved.



1 have the police to be in Les Irois, because every  
2 time that I have like to go look for the police who  
3 are so far away located, it's always too far for me  
4 to reach out to them.

5 BY MS. LAU:

6 Q. How did you feel when you learned that the  
7 radio station had been destroyed?

8 A. Because I never wanted this thing to happen in  
9 the city where I was a mayor, but unfortunately --  
10 unfortunately the way politics is done in Haiti and it's  
11 a very difficult way.

12 And I think if the senators and the deputy were  
13 really supporting me and trying to get the police to be  
14 in Les Irois, this thing would not happen, because it  
15 takes senators and deputy with the power to have the  
16 police to come to a place like Les Irois.

17 Q. Did you participate in the investigation of who  
18 destroyed the radio station?

19 A. No, I didn't participate in it.

20 Q. Who led the investigation?

21 A. In Haiti, everything that happens has to stay  
22 with politics. And any time that politics is involved  
23 in something, it's very difficult for the people to find  
24 justice, so that's why.

25 Q. My question was who led the investigation.





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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at [www.veritext.com](http://www.veritext.com).

Transcript of Deposition of Jean Denais Laguerre, *Boniface v. Viliena*, No. 17-cv-10477-ADB (D. Mass. Oct. 28, 2020)

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION  
CASE No.: 1:17-cv-10477-ADB

DAVID BONIFACE,  
NISSANDÈRE MARTYR, and  
JUDERS YSEME,  
Plaintiffs,

vs.

JEAN MOROSE VILIENA  
(a.k.a JEAN MOROSE VILIENA),  
Defendant.

\_\_\_\_\_ /

Videotaped Deposition of: JEAN DENAIS LAGUERRE

Date Taken: Wednesday, October 28, 2020  
Time: 10:01 a.m. - 12:36 p.m.  
Taken By: The Plaintiffs  
Location: VIA VIDEOCONFERENCE  
Reported By: Alyssa Zumpano,  
Stenograph Shorthand Reporter and  
Notary Public, State of Florida at Large.

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A P P E A R A N C E S :

DANIEL MCLAUGHLIN, ESQUIRE, VIA VIDEOCONFERENCE  
ELZBIETA MATTHEWS, ESQUIRE, VIA VIDEOCONFERENCE  
MEROUA ZOUAI, ESQUIRE, VIA VIDEOCONFERENCE  
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Also Present: Curtis Roginski, Videographer

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I N D E X

TESTIMONY OF JEAN DENAIS LAGUERRE

Direct Examination by Mr. McLaughlin	7
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PLAINTIFF'S EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
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S T I P U L A T I O N S

It is hereby stipulated by and between counsel for the respective parties that the reading and signing of the deposition be reserved.



1 BY MR. MCLAUGHLIN:

2 Q. To your knowledge, were there any judicial  
3 hearings held in Haiti for the killing of Ecclesiaste  
4 Boniface?

5 A. Yes.

6 Q. Were you present at any of those hearings?

7 A. Yes.

8 Q. Were any of Viliena's partisans present at  
9 those hearings?

10 MR. UITERWYK: Objection.

11 THE WITNESS: Yes.

12 BY MR. MCLAUGHLIN:

13 Q. Did any witnesses testify at these hearings?

14 A. Yes.

15 Q. Do you remember the name of any of those  
16 witnesses?

17 A. Yes.

18 Q. Could you give us those names please?

19 A. They was Vilfranc Larrieux. There was  
20 Franckel Ysme. There was Mers Yseme. And there was  
21 myself, Jean Denais Laguerre --

22 Q. Were any -- please, sorry. My apologies.

23 A. So there were other witnesses, but as they  
24 are not -- they are not willing to testify any longer, so  
25 I did not mention their name.

1 Q. Were any of the witnesses who testified at  
2 those hearings in Haiti intimidated?

3 A. Yes.

4 Q. Could you describe how they were intimidated?

5 A. So first, when the hearing was held in  
6 Jérémie, there were many members of KOREGA who were there  
7 putting pressure. They even switch up the generator that  
8 was giving electricity to the court building so that they  
9 can kill the witnesses who were there. Thanks to the  
10 police vigilance, so we could escape that.

11 Q. When you say they switched out the generators  
12 so they could kill the witnesses, who are you referring  
13 to?

14 A. I'm talking about myself, Franckel Ysme.

15 Q. So you were the targets of their attempts; is  
16 that correct?

17 A. No. It would be they -- no. They -- we were  
18 all their targets.

19 Q. And who is doing the targeting?

20 A. I don't know their names, of those people in  
21 Jérémie, but they were members of KOREGA. They were here  
22 to support their friend Jean Morose Viliena.

23 Q. To your knowledge was it common practice for  
24 the supporters of Jean Morose Viliena to intimidate those  
25 who might testify against them?



1 MR. UITERWYK: Objection.

2 THE WITNESS: Often.

3 BY MR. MCLAUGHLIN:

4 Q. Do you have any other examples of that  
5 intimidation that you could share with us?

6 A. Yes.

7 Q. Please do.

8 A. There was a lady. Her name is Cenes  
9 Jean-Pierre. She was not a witness, but she was a  
10 partisan of the victims. So once she get out of the  
11 court to buy something to drink and this man slapped her.  
12 She even fall down.

13 Q. And this happened at the hearings for the  
14 death of Ecclesiaste Boniface that you attended?

15 A. Yes.

16 Q. I want to switch now to another topic. And I  
17 want to turn your attention to the attack on the radio  
18 station that took place in April 2008. Were you still  
19 living in Les Irois at the time?

20 A. Yes.

21 Q. Was Viliena still the mayor of Les Irois in  
22 2008?

23 A. Yes.

24 Q. As the mayor could Viliena still direct the  
25 action of the partisans in April 2008?



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CERTIFICATE OF REPORTER

STATE OF FLORIDA:

COUNTY OF BROWARD:

I, Alyssa Zumpano, Stenograph Shorthand Reporter, certify that I was authorized to and did stenographically report the foregoing deposition of JEAN DENAIS LAGUERRE; that the review of the transcript was requested; and that the foregoing Pages 4 through 57, inclusive, are a true and complete record of my stenograph notes.

I further certify that I am not a relative or employee of any of the parties, nor am I a relative or counsel connected with the parties' attorneys or counsel connected with the action, nor am I financially interested in the outcome of the action.

DATED this 20th day of November, 2020.



Alyssa Zumpano,  
Stenograph Shorthand Reporter

Allard K. Lowenstein Int'l Hum. Rts. Clinic at Yale L. Sch., Bureau Des Avocats Internationaux, Inst. for Just. & Democracy in Haiti, Demande de Mesures Préventives Contre La République D'Haïti Au Nom Des Défenseurs Haïtiens Des Droits de L'Homme David Boniface, Nissage Martyr, et Juders Ysemé, Leurs Familles Immédiates, Ainsi Que Des Autres Dans Des Situations Similaires (July 17, 2015) [Plaintiffs\_0000552-70]

**DEMANDE DE MESURES PREVENTIVES  
CONTRE LA REPUBLIQUE D'HAÏTI  
AU NOM DES DEFENSEURS HAÏTIENS DES DROITS DE L'HOMME  
DAVID BONIFACE, NISSAGE MARTYR, ET JUDERS YSEME, LEURS FAMILLES IMMEDIATES, AINSI QUE DES  
AUTRES DANS DES SITUATIONS SIMILAIRES**

**DÉPOSÉ PAR:**

Allard. K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC AT YALE LAW SCHOOL

BUREAU DES AVOCATS INTERNATIONAUX

INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI

**LE 17 JUILLET 2015**

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A. Situation Sérieuse	
i. Viliena et la milice KOREGA ont fréquemment violé et vont probablement continuer à violer les droits fondamentaux des Requérants au point de violer la Convention.	
ii. Le gouvernement d'Haïti et la magistrature d'Haïti ne protègent pas les Requérants contre ces violations, malgré le fait qu'ils sont des défenseurs des droits de l'homme.	
iii. La Commission a déjà pris en considération des situations similaires et elle en a jugé celles-ci recevable parce qu'elles auraient satisfait aux exigences d'une « situation sérieuse ».	
B. Situation Urgente	
i. Viliena et la milice KOREGA vont probablement intensifier leurs menaces et leurs attaques contre les Requérants au cours des prochains mois en attendant le prochain procès.	
ii. La Commission a déjà pris en considération des situations similaires et elle en a jugé celles-ci recevable parce qu'elles auraient satisfait aux exigences d'une « situation urgente ».	
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ii. Les attaques de Viliena et la milice KOREGA causeraient des préjudices irréparables aux Requérants.	
iii. Ne pas tenir Viliena et la milice KOREGA responsables entrainerait des dommages irréparables à la communauté.	
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## I. RÉSUMÉ

1. *The Allard. K. Lowenstein International Human Rights Clinic* à Yale Law School (« la Clinique »), le Bureau des Avocats Internationaux (BAI), et l'*Institute for Justice & Democracy in Haiti* (IJDH) demandent respectueusement que la Commission Interaméricaine des Droits de l'Homme (« la Commission ») accorde des mesures préventives conformément à l'Article 25(2) du Règlement de la Commission Interaméricaine des Droits de l'Homme (ci-après « le Règlement »). La Clinique, le BAI, et l'IJDH présentent cette demande aux noms des défenseurs des droits de l'homme haïtiens David Boniface, Nissage Martyr, Juders Ysemé, les membres de leurs familles immédiates, ainsi que et aussi pour des autres personnes dans des situations similaires<sup>1</sup> (« les Requérants »). Les Requérants font face à une situation sérieuse et urgente qui a une très grande possibilité de provoquer des préjudices irrémédiables.
2. Les coordonnées des représentants juridiques sont les suivantes:

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3. Jean Morose Viliena (« Viliena ») — l'ancien maire (et maire intérimaire actuel en attendant les prochaines élections) des Irois — et la milice KOREGA ont violé et continueront à violer les droits des Requérants relative à la Convention.<sup>2</sup> Parmi plusieurs violations des droits de l'homme, ils ont assassiné Ecclesiaste Boniface, le frère du Requérant David Boniface, et ont torturé et ont tenté d'assassiner les Requérants Nissage Martyr et Juders Ysemé, les laissant estropiés et mutilés en permanence. Malgré le fait que Viliena et 18 membres de la milice KOREGA aient été accusés pour meurtre en 2010, seulement 6 personnes (sans compter Viliena) ont été condamnées. De plus, la Cour de cassation haïtienne a annulé les condamnations pour des raisons de procédure très irrégulière, et elle a ordonné un nouveau procès pour ces 6 membres. Le

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□ Les personnes dans des situations similaires sont celles qui habitent aux Irois qui ont été menacées ou attaquées par Viliena et la milice KOREGA, aussi bien que celles qui ont une grande possibilité d'être menacées ou attaquées par Viliena et la milice KOREGA à cause du prochain procès pénal. Ils comprennent des partisans vrais ou présumés de l'Organisation du Peuple en Lutte (« OPL »), le groupe d'opposition primaire aux Irois, et leurs familles.

2

□ Le père de Jean Morose Viliena's, Lissage Viliena, a aussi participé dans les violations des droits de l'homme, et il a été chargé dans une accusation pour sa participation.



procès est prévu pour le 3 juillet 2015. À cause du procès imminent, les Requérants ont très peur que Viliena et la milice KOREGA vont intensifier les menaces récentes et les attaques subies par eux et leurs familles. Cette crainte est le résultat du manque de protection accordé aux Requérants dans le passé, et de l'impunité dont jouit Viliena par rapport à ces violations des droits de l'homme. Jusqu'à ce jour, les Requérants ne sont au courant d'aucune action prise par le gouvernement Haïtien ou la justice Haïtienne pour les protéger face à ces menaces et ces attaques.

4. La République d'Haïti a ratifié la Convention américaine des droits de l'homme (« la Convention ») le 14 septembre 1977. Conformément à l'Article 276(2) de la Constitution haïtienne, la Convention fait partie de la législation du pays et abroge toutes les lois qui lui sont contraires. De plus, Haïti a accepté la juridiction obligatoire de la Cour interaméricaine des droits de l'homme (« le Tribunal ») le 20 mars 1998. Cependant, le gouvernement Haïtien n'a pas fourni des protections assez suffisantes aux Requérants en vue des violations des droits de l'homme auxquelles ceux-ci font face.
5. [...]
6. Par conséquent, la Clinique, le BAI, et l'IJDH demandent respectueusement que la Commission ordonne au gouvernement haïtien de :
  - Adopter toute mesure nécessaire afin de protéger la vie et l'intégrité physique de chacun des Requérants, de leurs avocats, des juges, et des témoins au procès à venir contre les membres de la milice KOREGA, ainsi que de leurs familles. Etant donné que Viliena continue à gouverner Les Irois en toute impunité, cette protection, au minimum, doit inclure:
    - La mise en examen des 13 accusés (y compris Viliena) qui ont été accusés en 2010, mais qui sont omis de l'avis du procès de mai 2014 pour le procès pénal à venir pour assurer que leurs actions soient jugées dans le cadre d'un procès public conformément à la loi;
    - La détention provisoire immédiate de chacun des 13 défendeurs (toujours vivants) des 18 contre qui des accusations ont été portées en 2010 et qui ne sont pas encore emprisonnés (5 parmi les 18 sont actuellement emprisonnés) ; et
    - Toute mesure nécessaire, après que le juge rend sa décision, pour empêcher que les Requérants subissent des représailles provenant de tout défendeur, peu importe s'ils sont toutefois emprisonnés, et peu importe si les défendeurs agissent par moyen de tierces personnes.
  - Adopter toutes les mesures nécessaires afin d'assurer que les Requérants pourront poursuivre leurs activités dans la capacité de défenseurs des droits de l'homme, sans faire l'objet de violence ni de harcèlement dans l'exercice de ces fonctions.
  - Parvenir à un accord par moyen de dialogue et de discussion avec les bénéficiaires et leurs représentatives par rapport aux actions à entreprendre pour mettre ces mesures en œuvre.
  - Rédiger un rapport sur les mesures entreprises pour mettre les mesures en œuvre et pour étudier les incidents allégués qui ont provoqué l'adoption des mesures préventives pour assurer que ces incidents ne se reproduisent pas à l'avenir.

## II. RAPPORT DES FAITS

### A. Violence Politique en Haïti et les Abus du Maire Jean Morose Viliena et la Milice KOREGA

7. Le 29 février 2004, des groupes paramilitaires ont renversé le gouvernement d'Haïti dans un coup d'État sanglant. Dès lors, le gouvernement d'Haïti n'arrive pas à assurer la sûreté du peuple. (*Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community*, OEA/Ser/L/V/II.123, 2005, paras. 86-89). L'effectif de la Police Nationale est notoirement insuffisant et les forces de l'ordre parfois absents dans quelques provinces (*Id.* à para. 90). La petite force de police est sous-payée et surmenée (*Id.* à paras. 93-94). En outre, plusieurs policiers sont corrompus et sont responsables des abus des droits de l'homme. Il y a souvent une réticence à investiguer ces abus. (*Id.* à para. 4). En plus, le système judiciaire d'Haïti est sous-financé, inefficace, et corrompu (*Id.*; Freedom House, *Haiti*, 2014). Par conséquent, Haïti est considéré comme le neuvième État le plus fragile au monde, se retrouvant ainsi parmi les rangs de l'Afghanistan, Pakistan et Yémen (Fund for Peace Fragile States Index 2014).
8. Au milieu de ce vide de pouvoir, des milices armées se sont emparées de pouvoir. La Coordination de Résistance à Grand'Anse (KOREGA) est une machine politique régionale qui utilise une milice armée pour influencer des élections, pour s'immiscer dans certains procès judiciaires, et pour supprimer l'opposition politique partout dans le département de Grand'Anse, l'un des dix départements d'Haïti. La KOREGA donne à ses membres des postes au sein du gouvernement en échange de leur loyauté. La Commission a déjà confronté les tactiques brutales qu'emploie la KOREGA dans l'affaire de *Johel Dominique v. Haiti* (Case 945-05, Admissibility Decision, Feb. 28, 2007). Dans ce cas, la milice KOREGA à Jérémie, une ville près des Irois, a ouvert le feu sur la maison de Johel Dominique, un juge d'instruction. (paras. 13-20).
9. En 2006, la KOREGA a employé des tactiques violentes et frauduleuses afin d'assurer l'élection de Jean Morose Viliena comme maire des Irois, une ville de presque 17,000 habitants située sur la côte occidentale d'Haïti. Par exemple, le jour des élections, les membres de la KOREGA ont saccagé la maison du candidat d'opposition Pasteur William Lebon. De plus, ils ont intimidé sa famille et ont tué un chien à sa résidence. En outre, un membre de la KOREGA, Pierrot Boileau, a payé des électeurs sur Pont-Pigy Boulevard pour voter Viliena. Lorsque Viliena est devenu maire, beaucoup de membres de la KOREGA ont intégré son cabinet.
10. Finalement installé comme maire, Viliena est devenu chef du département de la KOREGA aux Irois. À plusieurs reprises, il a ordonné aux membres de la milice KOREGA de menacer et d'attaquer tout ceux qu'il considérait comme des opposants à la KOREGA, y compris les partisans présumés de l'Organisation du Peuple en Lutte (« OPL »), le rival politique principal de la KOREGA dans la région.<sup>3</sup> La milice KOREGA a assassiné Eclesiaste Boniface (*voir infra* Section II.B), a saccagé une station de radio communautaire (*voir infra* Section II.C), et a complètement brûlé 36 maisons appartenant à des personnes qu'ils considéraient comme des opposants à Viliena ou à la KOREGA. Les victimes ont déposé plusieurs plaintes à la police et ont effectué des demandes aux tribunaux haïtiens, mais ceci n'a abouti qu'à l'inculpation de Viliena et de 20 membres de la milice KOREGA, une condamnation de 6 des 19 accusés (qui a été cassé deux années plus tard en appel), l'intimidation de témoins et la profération de menaces à l'encontre des Requérants (*voir infra* Section II.E). Le nouveau procès, qui ne vise que 6 membres de la milice KOREGA, est prévu pour le 3 juillet 2015, et l'annonce de la date du procès a été accompagnée d'une nouvelle vague de menaces de mort et d'attaques qui promettent de s'intensifier (*voir infra* Section II.F).

### B. L'Exécution Extrajudiciaire d'Eclesiaste Boniface le 27 juillet 2007

11. Le 27 juillet 2007, David Boniface, un enseignant qui a servi comme moniteur de la Cour pour une organisation locale des droits de l'homme affiliée avec le Réseau National de Défense des Droits Humains (« RNDDH »), a observé une audience à propos d'une agression contre une femme par maire Viliena.

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<sup>3</sup> Des membres de la milice KOREGA disent que chaque fois que la KOREGA se livre à la violence dans la région, c'est avec la permission du maire Viliena.

Boniface a obtenu la permission d'un juge de paix local, juge Saint Bell, de parler au nom de la femme. Irrité par les déclarations de Boniface, Viliena a claqué la porte de la salle d'audience. Une fois que Boniface a quitté la salle d'audience, Viliena et quelques membres de la milice KOREGA<sup>4</sup> l'ont confronté avant qu'il ait eu la chance de sortir du bâtiment.

12. L'un des membres de la milice, Jean-Louis Bell (un cousin de juge Bell), a essayé de frapper Boniface, pendant que les autres l'ont entouré en le menaçant. Un groupe de spectateurs est intervenu et a escorté Boniface chez un voisin, Nissage Martyr. Viliena et la milice KOREGA ont suivi Boniface chez Martyr et ont continué à le menacer. Finalement, Viliena a menacé qu'il s'occuperait de Boniface plus tard.
13. Le même soir, Viliena est venu au quartier de Boniface, a commandé les habitants de rester à l'intérieur, et a annoncé que la milice retournerait plus tard. En effet, ce soir Viliena et environ 12 membres de la milice KOREGA<sup>5</sup> sont venus à la maison de Boniface, armés des armes à feu, machettes, bâtons, et pioches. Le dossier d'inculpation affirme qu'ils « avaient l'intention de prendre la loi entre leurs mains » (Exposition A-1, para. 13). Comme David Boniface était à l'église, son cadet, Ecclésiaste Boniface qui avait 23 ans, a répondu à la porte. Sous la supervision de Viliena, la milice KOREGA (y compris des cousins de juge Bell) l'a traîné dans la rue. La milice de Viliena l'a coupé avec des machettes avant qu'un entre eux l'ait tiré avec un pistolet. Pendant que le corps d'Ecclésiaste était sur le sol, un autre membre de la milice a écrasé sa tête avec une grosse pierre. Ecclésiaste est décédé des suites de ses blessures, et Viliena et la milice KOREGA ont laissé son corps mutilé dans la rue, exposé au public.
14. Le matin du lendemain, la famille de Boniface a trouvé le corps d'Ecclésiaste. David Boniface a bientôt déposé une plainte avec juge Bell. De plus, il a éventuellement dû s'enfuir des Irois, craignant pour sa vie.

#### **C. L'Incursion sur la Station de Radio Communautaire le 8 avril 2008**

15. Étant donné le taux d'analphabétisme élevé, le manque de journaux, et le manque d'accès à l'Internet aux Irois, la radio est la source de nouvelles dans la ville la plus importante. Vers le mois de mars 2008, un groupe de journalistes locaux et activistes aux Irois ont fondé la première station de radio communautaire de la ville, New Vision Radio. La station de radio opère d'une chambre louée à la résidence privée de Nissage Martyr et elle a été supporté par deux politiciens OPL, sénateur Andris Riché et député Orelie Joachim.
16. Viliena a opposé la station de radio dès le début. Le jour où la station de radio a été lancée à la fin du mois de mars 2008, Viliena a déclaré publiquement son intention de la fermer. Vers le 8 avril 2008, Viliena et environ 30 membres de la milice KOREGA<sup>6</sup> sont venus à la station de radio chez Martyr, armés avec des armes de feu, des machettes, des pioches, et des marteaux.
17. Quand Martyr a approché la porte, Viliena l'a saisi, l'a traîné dans le couloir, a pointé un pistolet vers sa tête, et l'a dit de partir. Martyr a décliné parce que sa famille était encore à la maison. Viliena a déclaré qu'il croyait que Martyr planifiait à rapporter l'incident. Viliena a frappé Martyr sur la poitrine, le faisant tomber par terre, et il a continué à le frapper avec un pistolet. Les membres de la milice KOREGA ont entouré Martyr et ont enjoint à leur camarade d'agresser Martyr. Finalement, ils l'ont laissé par terre et, sous les ordres de Viliena, ils se sont emparés du matériel de radiodiffusion.

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□ Parmi eux étaient Hautefort Bajon, Meritus Beaublanc, Jean-Louis Bell, et Beniçoit Bell. Les deux derniers sont les cousins de juge Bell.

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□ Parmi eux étaient Hautefort Bajon, Pierrot Boileau, Meritus Beaublanc, Villeme Duclona, Michelet Noel, Jean Pierre Gardy, Lifaite Livert, Lissage Viliena (père de Viliena), Jean-Louis Bell, et Beniçoit Bell.

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□ Y compris Hautefort Bajon, Pierrot Boileau, Meritus Beaublanc, Lissage Viliena, Villeme Duclona, Michelet Noel, Jean Pierre Gardy, Lifaite Livert, Beniçoit Bell, Mones Dorcena, Keleman, Alan Duclona, France Isme, Martyr Kenson, Aguenel Jean, Esto Bell, et Jean-Louis Bell.

18. Cependant, un membre de la milice KOREGA, Aguel Jean, a repéré Juders Ysemé dans la cour. Accusant Ysemé de planifier de rapporter l'attaque aussi, Jean a saisi Ysemé, l'a traîné dans la maison, et l'a maîtrisé pendant que les autres membres de la milice s'est livrée à des voies de fait sur Aguel.
19. Martyr et Ysemé se sont relevés et ont couru vers la porte après que la milice les ont abandonné sur le sol. Malgré les douleurs qu'ils ressentaient, ils ont réussi à arriver dans la rue. En les voyant tenter d'échapper la garde de la milice, Viliena a ordonné à Villeme Duclona de tirer et tuer Martyr et Ysemé. Duclona a visé avec son fusil de calibre 12 et a tiré, frappant Martyr dans la jambe et Ysemé dans le visage. Viliena et la milice KOREGA ont saisi le reste du matériel de radiodiffusion et ont fui les lieux. Ils ont laissé Martyr et Ysemé pour morts.
20. Martyr et Ysemé ont, tous les deux, eu besoin de traitements médicaux intensifs. Les médecins qui traitaient Martyr ont dû amputer sa jambe blessée. Ysemé a eu deux opérations pour retirer des grains de plomb de son visage. Il est devenu aveugle de manière permanente dans un œil, et il a, à présent, des grains de plomb dans son cuir chevelu et ses bras.

#### **D. L'Incendie Volontaire de 36 Domiciles des Adversaires Politiques Présumés le 29 octobre 2009**

21. Vers le moi d'octobre 2009, Hautefort Bajon, le secrétaire général de Viliena, est tombé malade. Le 27 octobre 2009, Viliena et ses partisans de la KOREGA ont manifesté dans les rues des Irois, en chantant qu'ils brûleront complètement la ville si Bajon meurt. Viliena a aussi déclaré publiquement que l'OPL a jeté une malédiction vaudou sur Bajon.
22. Le lendemain, le 28 octobre 2009, Viliena dirigeait un groupe de la milice KOREGA<sup>7</sup> dans l'enlèvement de plusieurs partisans de l'OPL, qu'ils blâmaient pour la maladie de Bajon. Ils ont ligoté Doston Lebon et Torchon François avec des cordes et les ont fait défiler dans une grande rue, et les ont tapé pendant qu'ils marchaient. Un membre de la milice KOREGA a coupé l'oreille droite de Doston Lebon et puis il en a avalée. Les membres de la milice KOREGA ont aussi kidnappé la déléguée municipale Delicia Logiste de sa maison, l'ont ligotée avec des cordes, et l'ont séquestré dans une maison avec des autres otages, à savoir Lebon et François. Les otages ont été libérés à la fin de la journée, après que leur rapt n'a pas guéri la maladie de Bajon.
23. Le lendemain, le 29 octobre 2009, Bajon succomba à sa maladie. Peu de temps après, Viliena et sa milice KOREGA se sont rués dans le marché et ont commencé à taper des partisans présumés de l'OPL, les accusant d'avoir causé la mort de Bajon.
24. Le même jour, Viliena a ordonné à la milice KOREGA de brûler complètement des douzaines de maisons qui appartiennent à des partisans de l'OPL présumés. Par conséquent, 36 domiciles ont été brûlés, laissant 40 familles, ou 300 personnes, sans abri.
25. Dans la même nuit, la milice KOREGA<sup>8</sup> est allée chez Juders Ysemé. Pendant que Ysemé se cachait dans un jardin tout près, il regardait la milice en train de verser de l'essence dans sa maison afin de l'allumer. Plus tard, la milice<sup>9</sup> est allée chez Nissage Martyr, qui a observé Viliena donnant des instructions aux membres de la milice via un téléphone portable au haut-parleur.

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□ Y compris Meritus Beaublanc, Lifaite Livert, Michelet Noel, Villeme Duclona, Alan Duclona, Marc Arthur Conte, et Jimmy Antoine.

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□ Y compris Benoît Bell, Jean Louis Bell, Lissage Viliena, Marc Arthur Conte, Villeme Duclona, Alan Duclona, Lifaite Livert, et Meritus Beaublanc.

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□ Y compris Lissage Viliena, Michelet Noel, Lifaite Livert, Keleman, Pierrot Boileau, Meritus Beaublanc, Villeme Duclona, Benoît Bell, et Jean Louis Bell.

26. Après avoir reçu ses ordres, les associés de Viliena ont versé de l'essence dans le domicile de Martyr, et Villeme Duclona et ont allumé l'allumette pour mettre le feu. Martyr regardait d'une place de cachette pendant que sa maison brûle.
27. La milice KOREGA a brûlé les domiciles de David Boniface, Nissage Martyr, et Juders Ysemé dans l'indulgence d'incendie volontaire le 29 octobre 2009, et les a rendus inhabitables. En tout, la milice KOREGA a brûlé 36 domiciles, laissant 40 familles, ou 300 personnes aux Irois, sans abri. Martyr et Ysemé, comme Boniface, se sont enfui des Irois, ayant peur pour leurs vies.

#### **E. Des Poursuites Judiciaires Échouées**

28. Depuis 2007, les victimes des violations des droits de l'homme ont sorti au moins huit rapports ou plaintes avec la police et les autorités judiciaires d'Haïti, aussi bien que la Mission en Haïti de l'O.N.U. En dépit de cela, Viliena et la plupart des membres de la milice KOREGA n'ont pas été jugés responsables d'aucune de ces attaques.
29. L'autorité judiciaire d'Haïti a initialement ouvert une enquête pénale pour les incidents susmentionnés. En septembre 2008, juge Frank Drice du Judicial Investigation Office (*Cabinet d'Instruction*) de Jérémie (la capitale de Grand'Anse) a ordonné l'arrestation et la détention provisoire de Viliena. Or, Viliena a été libéré en décembre par raison de pression politique. Il a fui Les Irois afin d'éviter l'investigation. Cependant, la milice KOREGA de Viliena envoyait des menaces de mort à David Boniface (Amnesty Urgent Action, p. 1). Pendant que l'investigation était en cours, la milice KOREGA de Viliena a harcelé, menacé et agressé ceux qui ont témoigné contre les accusés. Par exemple, après que la voisine de la famille Boniface, Clorène François, a déposé un témoignage oculaire concernant le meurtre d'Eclesiaste Boniface, les membres de la milice KOREGA<sup>10</sup> sont allés chez elle, l'ont tabassé et l'ont étranglé sévèrement.
30. Le 21 décembre 2009, le procureur général de Jérémie a accepté la poursuite de Viliena et 18 membres de la milice KOREGA. Le 25 janvier 2010, juge Jean Gar Lundy en Jérémie accuse Viliena et dix-huit membres de sa milice<sup>11</sup> du meurtre d'Eclesiaste Boniface, de la mutilation de Martyr et Ysemé, et de l'incursion sur la station de radio (Exposition A-1). L'accusation constate que ni Viliena ni les 18 codéfendeurs qui ont fui la juridiction ne seraient jugés *in absentia* (*Id.*). Beaucoup de ses codéfendeurs ont fui, malgré les mandats d'arrestation qui leur visaient, ce qui, encore selon l'accusation, crée une présomption de culpabilité selon le code pénal d'Haïti (*Id.* à paras. 16-17). Malgré cela, le gouvernement d'Haïti n'a jamais intenté aucune procédure *in absentia* ne visant Viliena ni les autres fugitifs nommés dans l'accusation. Plutôt, le 25 octobre 2010, un tribunal en Jérémie a condamné seulement les six codéfendeurs qui sont restés à Grande-Anse<sup>12</sup> (Exposition A-2). Ces codéfendeurs ont lancé des appels pour leurs convictions, et le 24 mai 2012, les six convictions ont été annulées par la Cour de cassation haïtienne pour des raisons de procédures très irrégulières : les documents du cas, y compris le dossier des procédures du procès, ont disparu du dossier (Exposition A-6). La Cour de cassation haïtienne a soumis une amende contre le greffier de la cour pour ne pas avoir maintenu le dossier et elle a commandé un nouveau procès pour les six défendeurs. Mais pour deux ans après l'ordre, le gouvernement d'Haïti n'a poursuivi aucune autre action dans le procès, n'ayant un nouveau procès pour les six codéfendeurs, ni procédures *in absentia* contre les fugitifs. Aucune cour en Haïti n'a acquitté ni Viliena, ni aucun des codéfendeurs, et l'accusation de 2010 demeure en vigueur.

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□ Y compris Michelet Noel et Lifaite Livert.

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□ Ils étaient Hautefort Bajon, Maxene Vilsaint, Vilene Duclona (« Petit Américain »), Martyr Kenson, Boileau Pierrot, Lissage Viliéna, Mones Dorcena, Guerson Pierre, « Keleman », France Isemé, Jean Pierre Gardy, Agnel Jean, Jean Louis Bell, Lifaite Livert, Esta Bell, Meritus Beau blanc, Cedernier Fleurime, et Michelet Noel.

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□ Ils étaient Lifaite Livert, Mones Dorcena, Louines Charles, Jean Louis Bell, Michelet Noel, et Nissage Viliéna.

31. Ces dernières années, la KOREGA s'est alignée avec le parti politique du président Michel Martelly. Par conséquent, en août 2012, lorsque le mandat de Viliena comme maire des Irois a pris fin, le président Martelly l'a nommé maire intérimaire (« Agent Exécutif par Intérim »). Viliena continue à gouverner Les Irois, et il gagne un salaire, malgré les inculpations criminelles pour meurtre dans son casier judiciaire. Comme Agent Exécutif par Intérim, Viliena fait les fonctions d'un maire en effet.
32. Le 12 août 2013, le tribunal criminel départemental de Jérémie a condamné douze membres de la milice KOREGA<sup>13</sup> de Viliena pour l'incendie volontaire d'octobre 2009 (Exposition A-7). Malgré ce fait, la cour a suspendu leurs peines de prison et a ordonné leur libération de la prison, notant que les malfaiteurs ont été motivés par la tristesse après la mort de leur camarade, Hautefort Bajon. Viliena n'a jamais été accusé dans les procédures, malgré la preuve que c'était lui qui ait ordonné les incendies volontaires.

#### **F. Les Prévisions d'Abus Relative au Prochain Procès**

33. Un nouveau procès est désormais prévu pour le 3 juillet 2015, plus de trois ans après l'ordonnance par la Cour de cassation à cet effet. Des commentateurs politiques locaux croient que le but de tenir le procès à ce moment (initialement prévu en juin 2014, en suite mai 2015, en suite juin 2015, et maintenant le 3 juillet 2015) est de permettre à fermer le dossier, effectivement éliminant toutes les allégations à l'encontre de Viliena pour lui permettre à participer aux élections imminentes.
34. Les seuls défenseurs nommés dans l'avis de mai 2014 sont les 6 membres de la milice KOREGA qui ont été condamnés en octobre 2010. Si les 13 autres, y compris Viliena, ne sont ni accusés ni condamnés lors du nouveau procès, il est probable que, dans une affirmation de *res judicata*, ils ne seront jamais tenus responsables de leurs violations des droits des Requérants.
35. Les paragraphes qui suivent exposent les menaces proférées contre les Requérants depuis l'annonce du nouveau procès, prévu pour le 15 mai 2015 (et ultérieurement reporté au 3 juillet 2015) :
36. Le 14 avril 2015, les trois Requérants et leur avocat, Mario Joseph du BAI, ont tenu une conférence de presse pour attirer de l'attention sur la poursuite de Viliena.
37. Une semaine après cette conférence de presse, le ou vers le 21 avril 2015, une amie à David Boniface lui a appelé pour lui communiquer le fait qu'elle avait assisté à une réunion ce même jour auquel se sont également présenté cinq des conjurés de Viliena. L'un de ces conjurés a déclaré à la réunion qu'ils ne comparaitraient point au procès et que, au lieu, ils se présenteraient à l'église de David Boniface pour « l'agresser ». Lorsqu'il a été demandé pourquoi, le conjuré a répondu que les Requérants leur ont causé des troubles et qu'ils voulaient « le terminer ». Des hommes armés se sont présentés par la suite à l'église de David Boniface pour essayer de le repérer. Par conséquent, David Boniface n'assiste plus à la messe à son église, la seule église protestante aux Irois.
38. Le ou vers le 30 avril 2015, le fils de Martyr, âgé de 17 ans, a été menacé à l'école par un groupe de plus que 40 hommes qui seraient des partisans de Viliena et de la KOREGA. Les hommes lui ont balancé des pierres et des mangués, en brandissant des bâtons. Les autres étudiants l'ont sauvé du danger. Martyr a depuis retiré tous ces enfants de l'école.
39. Dans sa capacité d'Agent Exécutif par Intérim des Irois, Viliena contrôle la ville à travers la milice KOREGA. Il a plusieurs fois physiquement et oralement menacé non seulement Boniface, Martyr, et Ysemé, mais aussi leurs familles. En particulier, Viliena les a averti qu'il est au-dessus de la loi, et cela serait futile et dangereux de chercher de nouvelles voies de recours de la justice. Viliena et ses associés ont mis de la pression sur le directeur de l'école de Boniface pour qu'il le limoge, et ils ont menacé de tirer sur le père d'Ysemé s'il continue à travailler comme pêcheur de poisson. La milice KOREGA a aussi menacé de couper la dernière jambe de Martyr.

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<sup>13</sup> Y compris Lissage Viliena, Michelet Noel, Lifaite Livert, et Villeme Duclona.

40. Viliena et la milice KOREGA ont à plusieurs reprises montré et continuent de montrer un penchant à menacer, intimider, et tuer les Requérants et personne qui, à leur avis, leur oppose. Pendant que la date du nouveau procès approche, les attaques ont une plus grande probabilité de devenir plus commun pour deux raisons. Premièrement, les Requérants sont informés du fait que Viliena campagne pour une place dans le parlement. Les élections s'avèrent souvent un temps très dangereux en Haïti, particulièrement pour les journalistes et ceux qui sont présumés d'être des adversaires politiques ou des critiques. Quand Viliena a posé sa candidature pour être maire en 2006, la milice KOREGA a été impitoyable avec ses adversaires politiques. La KOREGA a employé des tactiques brutales et a utilisé ses muscles politiques afin de bloquer l'opposition et garantir l'élection de Viliena. Deuxièmement, membres de la milice KOREGA de Viliena passent en jugement. Quand ils étaient en train d'être investigués en 2008 et en justice pour leurs crimes en 2010, la milice KOREGA de Viliena menaçaient et attaquaient sans souffle les Requérants et leurs témoins, y compris l'agression féroce contre témoin oculaire Clorene François décrit *supra* dans le paragraphe 28. Les Requérants constituent une menace à la campagne politique de Viliena parce qu'ils ont été vocal auparavant à propos des abus des droits de l'homme du régime de Viliena, et plus de controverse pourrait salir la réputation de Viliena.

#### G. La Classification des Requérants comme des Défenseurs des Droits de l'Homme

41. Les Requérants sont des défenseurs des droits de l'homme comme défini par la Commission. Par conséquent, le gouvernement d'Haïti est spécialement obligé de les protéger contre les menaces et attaques de la main de Viliena et sa milice KOREGA.
42. Le *Report on the Situation of Human Rights Defenders in the Americas* (« Le Rapport ») de la Commission conclut que chaque personne qui d'aucune manière promouvait ou cherche la réalisation des droits de l'homme et des libertés fondamentales, nationalement or internationalement, doit être considéré un défenseur des droits de l'homme. Le critère pour identifier un défenseur des droits de l'homme, donc, est l'activité prise par cette personne (para. 14). Comme le Rapport déclare, « Les défenseurs des droits de l'homme entreprennent pour avancer la réalisation de n'importe quels de ses droits [de l'homme], y compris les **exécutions récapitulatives**, les disparitions forcées, **torture**, les détentions sans raisons, discrimination, les droits des laboureurs, le **droit d'abris** et des **expulsions forcées**, parmi des autres » (para. 15) (emphase ajouté).
43. Des exemples des actions d'un défenseur des droits de l'homme donnés par la Commission : l'investigation et la cueillette de renseignements pour des rapports par rapport aux violations des droits de l'homme, actions qui assure la responsabilité des autorités de l'état et qui élimine l'impunité, et des actions destinés à soutenir la gouvernance démocratique et à éliminer la corruption (para. 16).
44. David Boniface, Nissage Martyr, et Juders Ysemé sont tous des défenseurs des droits de l'homme sous les définitions de la Commission. David Boniface a une expérience détaillée de défendre les droits de l'homme même avant les altercations avec Viliena, comme Boniface a servi comme moniteur de la cour affilié avec le Réseau National de Défense des Droits Humains. Nissage Martyr a défié les vœux de Viliena en accueillant dans son domicile une station de radio communautaire que Viliena a voulu arrêter. Boniface, Martyr, et Ysemé ont fui Les Irois craignant des représailles de la part de Viliena parce qu'ils posaient une menace contre son pouvoir local continu. En 2012, Boniface, Martyr, et Ysemé ont eu une conférence de presse avec un sénateur haïtien et un membre de la Maison des Députés, revendiquant des abus locaux des droits de l'homme par Viliena et la milice KOREGA au niveau national (Exposition D-1). En plus, leurs tentatives répétées de trouver de la justice dans les juridictions haïtiennes et dans la presse nationale font preuves de leur statut de défenseurs des droits de l'homme. L'enquête de la justice décourage de futures violations des droits de l'homme comme des

autres exécutions, incendies volontaires, et attaques illégaux par Viliena (ou aucun autre politicien local en Haïti).

### III. DES MESURES DE PRECAUTION

45. Compte tenu des faits ci-dessus, la Commission doit lancer des mesures préventives pour protéger les Requérants du risque à leur vie et intégrité personnelle, et des autres violations des droits de l'homme. L'Article 25 du Règlement exige que trois conditions soient réunies avant d'accorder des mesures préventives :

[L]a Commission, peut, ... solliciter d'un Etat l'adoption de mesures préventives. Telles mesures, qu'elles aient ou non une connexion avec une pétition ou une affaire, se rapportent à des situations graves ou urgentes qui posent un risque causer un dommage irréparable à des personnes ou à l'objet d'une pétition ou une affaire pendante devant les organes du Système interaméricain (notre soulignement).

46. En effet, les Requérants font face à une situation sérieuse (*voir infra* Section III.A), une situation urgente (*voir infra* Section III.B), et une probabilité d'un risque de mal irréparable très élevé (*voir infra* Section III.C).

#### A. Situation Sérieuse

47. Selon le Règlement, une « situation sérieuse » réfère à « une grave incidence qu'une action ou omission puisse avoir sur un droit protégé ou sur l'effet éventuel sur une décision à venir pour un cas ou pétition devant les organes du système interaméricain » (Art. 25). Ce dossier est une situation sérieuse parce que : (i) Viliena et la milice KOREGA ont à plusieurs occasions violés et vont probablement violer les droits des Requérants sous la Convention ; (ii) le gouvernement et le pouvoir judiciaire d'Haïti ne protègent pas les Requérants des violations, malgré le fait que les Requérants sont des défenseurs des droits de l'homme; et (iii) la Commission a déjà traité des situations similaire comme suffisantes pour être une situation sérieuse.

- i. Viliena et la milice KOREGA ont à plusieurs occasions violé et vont probablement violer les droits de l'homme des Requérants sous la Convention.

48. Les atrocités que Viliena et la milice KOREGA ont commit pendant ces dernières huit années constituent des violations directes des droits de l'homme des Requérants sous la Convention. En particulier, les droits suivants ont été violés sous la Convention.

- **Le Droit à la Vie** (Article 4) – L'Article 4(1) prévoit que « [n]ul ne peut être privé arbitrairement de la vie ». L'assassinat d'Eclesiaste Boniface est une violation *per se* du droit à la vie.
- **Le Droit à l'Intégrité de la Personne** (Article 5) – L'Article 5(1) prévoit que « [t]oute personne a droit au respect de son intégrité physique, psychique et morale ». Le procès à venir a augmenté l'angoisse, la crainte, et l'anxiété sévère des Requérants et de leurs familles à cause de la peur de la possibilité de représailles de la part des malfaiteurs. Quand la voisine de Boniface a été un témoin, la KOREGA est allé chez elle et l'a agressé sévèrement et l'a étranglé. Martyr continue à recevoir des menaces de la part de Viliena et sa milice KOREGA l'a menacé de couper son autre jambe. Viliena et ses associés ont menacé de tirer sur le père de Ysemé s'il continue à travailler comme pêcheur de poisson.

Selon l'Article 5(2), « [n]ul ne peut être soumis à la torture ni à des peines ou traitements cruels, inhumain ou dégradants. Toute personne privée de sa liberté sera traitée avec le respect dû à la dignité inhérente à la personne humaine ». Viliena et ses membres de la milice KOREGA ont soumis Eclesiaste Boniface, Nissage Martyr, et Juders Ysemé à de la violence physique extrême, résultant en la peine sévère, la mutilation, et la mort. Pendant l'incursion de 2008 sur la station de radio communautaire, Martyr et Ysemé ont été battus et tirés sous l'autorité de Viliena pour le but



de les intimider, les pénalisant pour leur affiliation à la station de radio, et les prévenant de rapporter les malfaiteurs pour faute officielle.

- **Le Droit à l'Honneur et la Dignité de la Personne** (Article 11) – Viliena et la milice KOREGA ont porté abusivement atteinte à la vie, la famille, et le domicile privé de David Boniface, Nissage Martyr, Juders Ysemé, de leurs familles, et des domiciles des familles qui ont été brûlés complètement.
- **La Liberté de Pensée et d'Expression** (Article 13) – Viliena et la milice KOREGA ont interféré avec le droit de liberté de pensée et d'expression des personnes associées avec ou qui ont écouté la première station de radio communautaire aux Irois. L'Article 13(1) prévoit que ce droit comprend la « liberté de rechercher, de recevoir et de répandre des informations et des idées de toute espèce ». L'Article 13(3) mentionne en particulier que la liberté d'expression ne doit pas être limitée par des contrôles sur les « fréquences de radioélectriques ». L'incursion par Viliena sur la station de radio communautaire n'a pas seulement violé les droits des Requérants, mais aussi les droits de la communauté entière des Irois.
- **Le Droit de Protection de la Famille** (Article 17) – L'Article 17(1) met en relief le fait que « la famille est l'élément naturel et fondamental de la société; [et qu']elle doit être protégée par la société et par l'État ». Viliena et la milice KOREGA ont attaqué les familles de David Boniface, Nissage Martyr, Juders Ysemé, et ont attaqué des autres familles dans la communauté par l'acte d'avoir brûlé complètement leurs maisons. Comme tel, les actions de Viliena et la KOREGA directement violent les droits de la famille par la destruction de leurs domiciles et par la privation d'un lieu communal pour exercer leur droits.
- **Droit à la Propriété Privée** (Article 21) – Viliena et la milice KOREGA ont brûlé complètement 36 domiciles. L'Article 21(1) prévoit que « [t]oute personne a droit à l'usage et à la jouissance de ses biens ». L'Acte de brûler complètement 36 domiciles en laissant 400 membres de la communauté des Irois sans abri est en violation directe avec ce droit. En plus, beaucoup de la terre et la propriété de Nissage Martyr ont été volés après les incendies volontaires, et la terre est à présent en jachère. Il n'a pas de salaire et il vit au jour le jour, dépendant sur les autres pour l'assistance financière.
- **Droit de Déplacement et de Résidence** (Article 22) – L'Article 22(1) prévoit que « [q]uiconque se trouve légalement sur le territoire d'un État a le droit d'y circuler librement et d'y résider en conformité des lois régissant la matière ». Les menaces et les attaques de Viliena et la milice KOREGA ont forcé la fuite de David Boniface, Nissage Martyr, et Juders Ysemé des Irois en allant en cachette parce qu'ils craignent la revanche. En plus, la carte d'identification nationale d'Ysemé a été perdue dans le feu lorsque Viliena et la milice KOREGA ont brûlé complètement sa maison. Par conséquent, tous les trois ne peuvent pas exercer leur droit de déménagement et résidence à condition que Viliena et les autres membres de la KOREGA n'ont pas été tenus responsables.
- **Le Droit à la Protection Judiciaire** (Article 25) – L'Article 25(1) confère le « droit à un recours simple et rapide ... destiné à la protéger contre tous actes violant ses droits fondamentaux ». David Boniface, Nissage Martyr, et Juders Ysemé, et les familles pour lesquelles les maisons ont été brûlées, n'ont pas eu un recours effectif pour les violations des droits humains qu'elles ont souffert. Malgré que 12 membres de la milice KOREGA aient été condamné pour l'incendie volontaire, les 19 membres accusés en 2010 du meurtre d'Eclesiaste Boniface et l'incursion sur la station de radio communautaire ont eu un délai dans leur procès, et 13 entre eux, y compris Viliena, ne vont pas être poursuivi.

49. Beaucoup des violations continuent jusqu'à ce jour. Par exemple, les habitants des Irois sont encore privés du droit de la liberté pensée et d'expression (Article 13) après que Viliena et sa milice KOREGA aient démontré comment ils réagiraient à une station de radio communautaire. En plus, les abus de Viliena et la

milice KOREGA contre Boniface, Martyr, and Ysemé continue à les nier leur droit de déménager et d'habiter librement. (Article 22). Ils sont à présent en cachette et craignent constamment pour leurs vies. Les abus du passé et les menaces qui continuent ont privé les Requérants de leurs droits de famille, parce que leur famille n'a reçu aucune information de leur location pour beaucoup de temps, et en plus, elles sont sujettes des menaces de Viliena basé sur rien que leur position comme membres de la famille des Requérants.

50. En plus, beaucoup des violations vont être répétées à l'avenir. Comme maire par intérim des Irois, Viliena non seulement exerce l'influence sur la ville, mais il a aussi accès à tous les dossiers du publique et de l'état. Par conséquent, il peut savoir le moment où aucun des Requérants déménagent officiellement ou font aucun acte d'affaire municipale ou d'état, le donnant la location des Requérants. En plus, Viliena maintient le contrôle de facto de la milice KOREGA dans la région. Lui et sa milice continue à menacer et à attaquer les Requérants, les membres de leurs familles, et leurs alliés. Par exemple, comme mentionné en Section II.E, ils ont attaqué Clorene Francois, ont essayé d'avoir Boniface renvoyé de son travail, et on menacé de tirer sur le père d'Ysemé, et on menacé de couper l'autre jambe de Martyr.

ii. Le gouvernement et la Justice d'Haïti ne protègent pas les Requérants de ces violations, alors même qu'ils sont des défenseurs des droits humains.

51. Les organisations des droits de l'homme et les Requérants ont informé le gouvernement et la Justice d'Haïti des violations de droits humains de Viliena et sa milice KOREGA. Cependant, le gouvernement et la judiciaire ne protègent pas les Requérants des violations comme démontrées par les faits suivants :

- L'octobre 2010, le tribunal de Jérémie a jugé seulement 6 des 19 défendeurs accusés et a échoué, sans justification légale, de juger Viliena, malgré son rôle comme chef de la milice KOREGA, son participation directe dans les violations, et son accusation en 2010 pour les mêmes crimes.
- En mai 2012, la Cour de Cassation a annulé la condamnation des 6 membres de la milice.
- En août 2012, Président Michel Martelly a nommé Viliena l'Agent Exécutif par Intérim des Irois, malgré ses violations documentées.
- En août 2013, le Tribunal Criminel de Jérémie a renversé les peines des membres de la KOREGA condamnés par rapport à l'incendie volontaire et a commandé leur libération de prison. En plus, la cour n'a pas accusé Viliena dans les procédures malgré les témoignages qui dit que c'était lui qui a ordonné l'incendie volontaire.
- Le système judiciaire d'Haïti a attendu deux ans avant de commencer le procès que la Cour de Cassation a ordonné en mai 2012.
- Le procureur général a donné l'impression incorrecte aux fonctionnaires d'O.N.U. que Viliena a été acquitté des accusations contre lui.

52. L'échec d'Haïti de ne pas agir contre ces violations flagrantes des droits de l'homme va aggraver la crise des droits de l'homme et humanitaire en Haïti. Comme documenté dans le rapport de 2005 par cette Commission : « Haïti: Justice Ratée ou L'Autorité de la Loi ? Les Défis à Venir pour Haïti et la Communauté Internationale » et son rapport suivant en 2007, la Commission continue à recevoir des rapports d'Haïti à propos des abus de la police (rapport de 2007 para. 19), le manque pénétrant de sécurité nationale et ordre en face de résistance armée et gangs (rapport de 2005 para. 84), et les défauts du judiciaire, y compris sa manque d'indépendance et de la sécurité inadéquate pour que les juges puissent délivrer des décisions impartiales et justes (rapport de 2005 paras. 145-166). Le système judiciaire est sous-financé, inefficace, et corrompu (Haïti, Freedom House report, 2009). En plus, l'Office Haïtien de Protection des Citoyens, qui a un mandat de répondre aux allégations d'abus du gouvernement, est sous-financé est improbable d'y prendre des mesures (Haïti, Freedom House report, 2009).

53. Dans le *Deuxième rapport sur la situation des défenseurs des droits de l'homme*, la Commission codifie les obligations affirmatives des Etats de prévenir les menaces et l'harcèlement, ainsi que des poursuites vexatoires et des investigations criminelles contre des défenseurs des droits humains, même ceux qui ont été initiés par des tierces personnes.<sup>14</sup> Le gouvernement d'Haïti a une obligation affirmative d'arrêter les menaces récentes et de protéger les Requérants. N'importe quel support gouvernemental pour la fuite de Viliena et la milice KOREGA dissuade le travail des Requérants comme défenseurs des droits humains. Comme indiqué par *Fleury et al. v. Haïti* (Jugement le 23 nov. 2011), l'Etat est « obligé de fournir des recours juridictionnel efficaces pour ceux qui allèguent qu'ils sont des victimes des violations des droits humains » (para. 105). Cela inclut « L'obligation d'investiguer, poursuivre et, le cas échéant, de punir des violations des droits humains » (para. 106). Le gouvernement d'Haïti n'a pas soutenu ces droits des Requérants. Viliena n'a jamais été accusé dans les procédures d'incendie volontaire, et lui aussi que douze des partisans de la KOREGA ont été omis d'avis du procès renvoyé de meurtre.) La Commission doit condamner la pratique d'accorder l'impunité aux agents de l'état par le système judiciaire d'Haïti.
54. L'abus de pouvoir judiciaire et les violations des droits aux protections judiciaires dans ce cas est cohérent avec les résultats de la Commission et la Cour interaméricaine dans l'arrêt de *Neptune c. Haïti* (Jugement du 6 mai 2008). Dans l'espèce, la Cour et la Commission ont statué que l'Haïti a violé les droits de Monsieur Neptune à un procès juste et à la protection judiciaire fondé sur, entre autres, le délai pour son procès de plus de deux ans, l'échec de ne pas avoir un jugement final, et les procédures inadéquates qui ont eu lieu dans des courts incompetents (paras. 80-84). Le délai de deux ans dans *Neptune* pour les dossiers des procédures judiciaires indique un pattern d'abus de pouvoir judiciaire et l'impunité pour les victimes des violations des droits humains en faveur du gouvernement d'Haïti.
55. L'abus est aussi consistant avec les découvertes de la Comité des Droits de L'homme, qui a indiqué souci pour l'harcèlement et l'intimidation des Défenseurs Haïtiens des Droits Humains et des journalistes, et il a noté l'échec du gouvernement de protéger leurs droits. (*Comité des Droits de L'homme, Observations Finales Concernant Le Rapport Initial d'Haïti* (Octobre 30, 2014)). La Comité des Droits de L'homme veut que le gouvernement d'Haïti protège les Défenseurs des Droits Humains afin qu'ils puissent exercer leurs droits librement (*Id.* à para. 19).
56. Le résultat de l'échec du gouvernement et de la Justice d'Haïti de traiter les violations des droits de l'homme desquels les Requérants ont souffert sous les mains de Viliena et la milice KOREGA, les Requérants ont du obtenir les conseils de la Clinique, BAI, et IJDH. Ces organisations reconnaissent la situation sérieuse et ont déterminé que le seul acte qui reste est de chercher des mesures de précautions par la Commission.
57. Une garantie des mesures de précaution dans ce cas assurerait que les Requérants jouissent leur droit de la vie et d'intégrité personnelle. Cela agit aussi comme une étape sur le pas d'établir l'autorité de la loi et le respect pour les droits de l'homme en Haïti en prenant l'opposition contre la brutalité de la police, forçant Haïti de prendre des mesures publiques contre des groupes armés comme la KOREGA qui menace la sûreté nationale, et signalant au judiciaire la nécessité d'avoir un procès juste et rapide dans le cas à venir, qui a traîné depuis 2010.
- iii. La Commission a déjà permis des situations similaires à satisfaire l'exigence d'une « situation sérieuse ».
58. Dans le Mesure de Précaution 161/14 (le 9 Juin, 2014), la Commission a alloué des mesures de précaution à Pierre Esperance et des membres du Réseau National de Défense des Droits Humains (RNDDH) en Haïti. La Commission indiquait que le cas a été une « situation sérieuse » parce que Esperance et le RNDDH font face à une série de menaces et de représailles pour leurs activités come défenseurs des droits humains. Ces menaces « sérieuses » incluent, par exemple, une attaque armée sur Esperance, suivi par un missive

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<sup>14</sup> La Commission interaméricaine des droits de l'homme, *Deuxième rapport sur la situation des défenseurs des droits de l'homme*, (2011) <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

envoyé à son office RNDDH avec un arme à feu en dedans (para. 4). C'est important de noter que ces actes qui ont satisfait les exigences d'une « situation sérieuse » sont moins sévères que les actes de meurtre flagrant et de la destruction de propriété trouvé dans ce cas.

59. Dans le Mesure de Précaution 363/12 (le 19 octobre 2012), la Commission a alloué des mesures de précaution à Mario Joseph en Haïti. Mario Joseph est aussi l'un des avocats du BAI qui représente les Requérants dans ce procès. La Commission a indiqué que le cas a été une « situation sérieuse » Joseph a allégué qu'il a été sujet des menaces et des actes d'harcèlement à cause de ses activités de défendre des droits humains et de contester l'impunité gouvernementale à travers son direction au BAI. Il a reçu plusieurs menaces de morts pendant plusieurs mois et son cabinet a été fouillé par des agents de l'Etat sans cause. Encore, on note que dans ce cas le requérant avait reçu des menaces, cependant cette circonstance avec Viliena implique des violations sérieuses du passé et des menaces d'aujourd'hui et qui continue contre les Requérants et leurs familles dans la forme des menaces de tuer, d'estropier sévèrement, ou de causer des préjudices financiers irréparable si les Requérants ou leurs familles témoignent contre Viliena et la milice KOREGA, ou bien contester leur pouvoir politique.
60. Dans le Mesure de Précaution 304/13 (le 27 novembre 2013), Patrice Florivilus et les membres de son organisation ont obtenu des mesures de précaution après avoir reçu des menaces, souffert de la persécution, été soumis à une plainte injuste pour leurs travaux des droits de l'homme (para. 6). La Commission dans ce cas a trouvé que l'exigence d'être sérieux était accomplie à cause des « menaces, actes d'harcèlement, et de persécution contre les bénévoles » particulièrement trouvant que les menaces était « sérieuses » parce qu'ils ont indiqué d'avoir eu la connaissance de l'adresse du domicile, l'adresse de son travail, et sa route normale d'aller à travail (para. 11).
61. Dans ce cas, non seulement y a-t-il des menaces, mais ces menaces ont été réalisées sous la forme de meurtre, blessures permanentes, et beaucoup de domiciles brûlés. En plus, Viliena connaît les adresses de résidence et de travail des Requérants, à cause de ses connections dans cette ville petite et son position comme maire des Irois par intérim. Alors, cela serait raisonnable de conclure que le taux de sérieux de ce dossier surpasse le niveau de « sérieux » que la Commission a tenu suffisant d'ordonner des mesures de précaution dans des cas précédents de menaces d'abus.

### **B. Situation Urgente**

62. Selon le Règlement, une « situation urgente » réfère à un « risque ou menace qui est imminent et que se réalise, demandant d'action préventif et protectif immédiate » (Art. 25). Ces cas représente une situation urgente parce que (i) Viliena et la milice KOREGA vont probablement intensifier les menaces et attaque contre les Requérants pendant les prochains mois en attendant le prochain procès; et (ii) la Commission a jugé que des situations similaires satisfieraient l'exigence d'une « situation urgente ».
  - i. Viliena et la milice KOREGA vont probablement intensifier les menaces et attaque contre les Requérants pendant les prochains mois en attendant le prochain procès.
63. Viliena et la milice KOREGA commettaient des violations des droits humains contre les Requérants pendant les dernières huit ans. Les violations vont probablement intensifier pendant les prochains mois pour deux raisons liées. Premièrement, le nouveau procès ordonné le mai 2012 par le Tribunal Haïtien de Cassation aura lieu bientôt dans les prochains mois. Deuxièmement, d'après les commentateurs politiques, Viliena va participer dans les prochaines élections pour le Parlement.
64. Les actes dans le passé de Viliena révèlent que ce procès et ces élections vont être accompagné par des menaces et des attaques violentes contre les Requérants. Au passé, Viliena et ses associés ont menacé les témoins qui ont témoigné aux investigateurs haïtiens. Comme mentionné en Section II.E, membres de la milice KOREGA de Viliena ont battu et étranglé Clorene Francois, une voisine de la famille Boniface après qu'elle a témoigné du meurtre d'Eclesiaste Boniface.
65. En plus, les Requérants ont entendu de la main des membres de la KOREGA que le procès à venir peut être arrangé avant les élections parlementaires, pour que Viliena puisse effacer son nom de tout malfeasance.

Pendant la dernière campagne de Viliena pour maire en 2006, il a intimidé et menacé ses adversaires. Etant donné son ancienne campagne violente, les victimes et des autres défenseurs des droits humains croient que la campagne politique de Viliena apportera plus de menaces et intimidation contre eux sauf si la Commission ordonne des mesures de précaution.

ii. La Commission a tenu des situations similaires pour satisfaire l'exigence d'une « situation urgente ».

66. Dans le Mesure de Précaution No. 641-02 (le 18 juillet 2014), un cas de la Colombie, la Commission a dit que l'exigence d'urgence a été accompli à cause des « menaces qui continues et leur proximité de temps » (para. 13). Dans ce cas, la Commission regardait « les contextes des circonstances et le long histoire de risque » et a déterminé que ses éléments suggèrent un besoin d'un protection qui continu afin de prévenir un dommage possible aux droits des individuelles vulnérables. La Commission a noté que c'était approprié de considérer que les Requérants ont déposé une plainte sans résultats (para. 13).
67. Dans le Mesure de Précaution No. 252-141 (le 18 juillet 2014), la Commission a ordonné des mesures de précaution contre le Mexique pour des journalistes qui faisaient face aux menaces d'harcèlement et dommage à leur propriété après avoir publié des articles liés aux cas de corruption, l'abus de pouvoir, et les violations des droits humains par des autorités de l'état. La Commission a trouvé urgence dans le fait que les Requérants « faisaient face à une histoire de violence et que les attaqués supposés connaissent leur adresses privées » (para. 9). La Commission déclare que « la continuité et la proximité des situations de risque détermine la nécessité de protection immédiate » (para. 9).
68. Dans le Mesure de Précaution No. 218-14 (le 20 juin 2014), la Commission a ordonné des mesures de précaution contre la Colombie en support de Y.C.G.M. et sa famille immédiate qui ont été attaquée à cause de son travail comme un défenseur des droits humains. En déterminant si les exigences d'être urgent ont été accompli, la Commission a considéré le fait que les actes de violence contre Y.C.G.M. et sa famille « augmentaient sans arrêt, sans être pourvu de protection efficace » (para. 10). Même si l'état a approvisionné quelques mesures de protection, la Commission ne les a pas considéré adéquate à mitiger le risque, pourvu que « les différentes situations de risque n'ont pas été suffisamment investiguées, qui supposément a laissé les éléments de risque de rester actifs jusqu'aujourd'hui » et a laissé les Requérants de rester dans une « situation sans défense » (para. 10).
69. Dans ce cas, il y a une histoire et un risque qui continue des menaces et des attaques. En plus, il y a fortes raisons de croire que ces menaces et attaques vont intensifier durant les prochains mois, particulièrement parce que le gouvernement d'Haïti n'a pas garanti beaucoup de mesures protectives. Par conséquent, la Commission doit aussi trouver que les faits de ce cas prouvent que ce cas accomplit l'exigence d'urgence.

**C. Risque Très Elevé d'un Mal Irréparable**

70. Selon le Règlement, « un mal irréparable » s'agit d'une « rupture aux droits qui, à cause de leur forme, ne sont pas susceptible à la réparation, restauration, ou assez de rémunération » (Art. 25). Ce cas présente un risque très élevé d'un mal irréparable parce que : (i) Viliena et la milice KOREGA vont continuer à faire du mal aux Requérants; (ii) les attaques de Viliena et la milice KOREGA vont faire mal irréparablement aux Requérants; et (iii) échouant à tenir Viliena et la milice KOREGA responsable va faire mal irréparablement à la communauté.
- i. Viliena et la milice KOREGA vont continuer à faire du mal aux Requérants.
71. Les circonstances actuelles aux Irois ressemblent à celles des menaces et attaques d'auparavant par Viliena et la milice KOREGA. Comme maire par intérim, Viliena continue à exécuter les fonctions du maire des Irois, et il continue à diriger la filiale de la KOREGA. La communauté des Irois a peur d'une revanche si quelqu'un ose de défier les intérêts de la KOREGA. Viliena et la KOREGA ont montré leur penchant et capacité d'écarter la Convention en toute impunité. Les conditions n'ont pas beaucoup changé depuis les abus d'hier, et le risque de mal irréparable à l'avenir reste encore trop haut.

72. En plus, comme mentionné en Section III.B, deux événements qui ont incité des attaques—élection et un procès à propos des violations des droits des Requérants—aura lieu encore une fois. Avec ces deux événements qui approchent, et que l'importance pour Viliena n'a pas changé, il va probablement utiliser les mêmes manœuvres qui l'ont laissé abuser les droits des Requérants en toute impunité et de gagner du support politique : des menaces, les attaques, et le meurtre.

ii. Les attaques de Viliena et la milice KOREGA vont faire mal irréparablement aux Requérants.

73. Les attaques de Viliena et la milice KOREGA ont fréquemment fait dommage irréparable aux individus. Le frère de David Boniface, Ecclésiaste, n'a pas seulement été tuer, mais son corps estropié est resté dans la rue pour que tous puissent le voir. Nissage Martyr non seulement a eu une jambe amputée, mais il a aussi perdu son domicile à l'incendie volontaire après une autre visite avec Viliena et sa milice. Et Juders Ysemé non seulement est devenu aveugle dans un œil, mais il a aussi perdu son domicile dans une attaque d'incendie volontaire. En plus, la milice KOREGA de Viliena a brûlé 34 domiciles en plus—sans mentionner des affaires personnelles irremplaçables—complètement. Il n'y a pas de raison de croire que Viliena et sa milice n'encourageront plus de mal irréparable aux Requérants.

iii. Echouant à tenir Viliena et la milice KOREGA responsable va faire mal irréparablement à la communauté.

74. Echouant à tenir Viliena et la milice KOREGA responsable va faire mal irréparablement à la communauté. Par exemple, l'attaque par Viliena sur la station de radio va probablement rendre les membres de la communauté inquiets d'exprimer leurs avis politiques. Les atrocités commises dans la forme de brûler 36 domiciles aux Irois complètement, laissant 300 personnes sans abris, et les attaques contre les adversaires politique dans la rue découragent l'opposition publique à Viliena. Cet effet sur la communauté restera longtemps si Viliena n'est pas jugé responsable pour ses actes.

75. En plus, si Viliena n'est pas tenu comme défendeur dans le prochain procès, l'opportunité de le conduire à la justice peut disparaître. Le principe de *res judicata* peut être invoqué pour prévenir toute autre procédure judiciaire qui lui rendra responsable pour ses actes si un jugement est rendu dans le prochain procès. Enfin, Haïti doit assurer que chaque personne responsable pour des violations du passé—y compris Viliena—soit ajoutée comme défendeur dans le prochain procès.

76. Si le gouvernement d'Haïti et le judiciaire faillissent à protéger les Requérants, y compris ceux qui ont travaillé avec courage comme des défenseurs des droits humains, cela va raffermir le crainte de revanche et intimidation qui rend difficile le travail de réduire les pratiques abusives des politiciens violents.

77. Le procès à venir est la seule étape qui reste pour protéger les droits des Requérants à travers le système judiciaires d'Haïti et d'assurer de la justice pour les Requérants. Parce qu'on n'a pas raison valable légalement de ne pas inclure les 13 autres défenseurs, y compris Viliena, dans ce procès, ces défenseurs doit être réintroduits dans le procès. Si cela n'arrive pas, ils seront toujours en pouvoir aux Irois, les laissant capable de menacer et attaquer les Requérants en perpétuant les violations des droits humains contre les membres de la communauté en toute impunité.

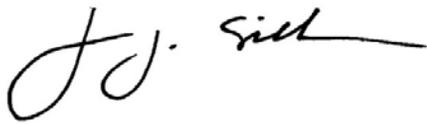
#### **IV. PRIERE POUR SECOURS**

78. Le mode principal de fournir de la protection aux Requérants contre des violations des droits de l'homme à l'avenir c'est de réintroduire Viliena et ces membres de la milice KOREGA responsable pour les attaques du passé comme des défenseurs dans le prochain procès et de les leur mettre en détention provisoire pendant cette période avant le procès. Sinon, ils vont continuer à menacer et attaquer les Requérants, leurs avocats, et leurs témoins pour le prochain procès, aussi bien que leurs familles.

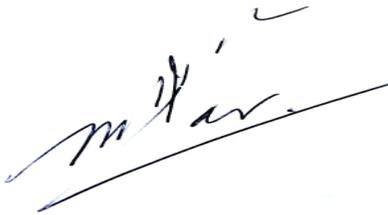
79. Compte tenu des mots qui y précèdent, la Clinique, BAI, and IJDH respectueusement demande que la Commission commande le gouvernement d'Haïti à:

- Accepter les mesures nécessaires pour protéger les vies et l'intégrité physique des Requérants, leurs avocats, leurs juges, et leurs témoins dans le prochain procès contre les membres de la milice KOREGA, aussi bien que leurs familles. Parce que Viliena continue à gouverner Les Irois en toute impunité, cette protection, au minimum doit inclure :
  - la mise en examen des 13 défendeurs (y compris Viliena) qui ont été accusés en 2010 mais qui ont été omis de l'avis de procès de mai 2014 ; et
  - l'immédiate incarcération avant le procès de tous les 19 défendeurs qui ont été accusés en 2010.
- Arriver à un accord à travers le dialogue et la discussion avec les affectés et leurs représentants à propos des mesures à adopter.
- Rédiger un rapport sur les actions prises d'afin d'investiguer les incidents présumés qui ont donner l'occasion pour l'adoption de ces mesures de précaution pour qu'ils ne puissent arriver pas encore.

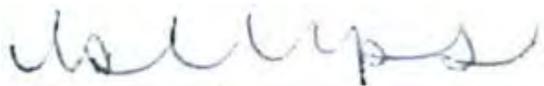
17 Juillet 2015



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[Plaintiffs\_0000573-604]



## **HAITI 2018 HUMAN RIGHTS REPORT**

### **EXECUTIVE SUMMARY**

Haiti is a constitutional republic with a multiparty political system. Voters elected Jovenel Moise as president for a five-year term in national elections held in November 2016, and he took office in February 2017. The most recent national legislative elections were held in January 2017. International election observers considered the elections free and fair.

Civilian authorities maintained effective control over security forces.

Human rights issues included isolated allegations of unlawful killings by police; excessive use of force by police; arbitrary detention; harsh and life-threatening prison conditions; a judiciary subject to corruption and outside influence; physical attacks on journalists; widespread corruption and impunity; and human trafficking, including forced labor.

The government rarely took steps to prosecute government and law enforcement officials accused of committing abuses. There were credible reports that officials engaged in corrupt practices, and civil society groups alleged widespread impunity.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

#### **a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings**

There were isolated allegations of police involvement in arbitrary or unlawful killings. Some allegations resulted in administrative sanctions, but there were no reports of criminal proceedings.

As of September no criminal proceedings were initiated in the November 2017 deaths of two police officers and nine civilians during an antigang operation in Port-au-Prince by the Haitian National Police's (HNP) Departmental Crowd Control Unit (UDMO) and the Departmental Operations and Interventions Brigade. The National Network of Human Rights Organizations in Haiti (RNDDH) reported that UDMO officers beat numerous individuals and executed at least two in retaliation for the deaths of their colleagues. A report by the HNP inspector general found one UDMO officer, Glessen Philidor, liable for the deaths, recommended him for dismissal, and referred the case to the Port-au-Prince

Prosecutor's Office. The HNP commissioner for the West Department and a dozen of the UDMO officers involved in the operation were transferred to other posts.

### **b. Disappearance**

There were no reports of disappearances by or on behalf of government authorities.

### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The law prohibits such practices; however, there were several reports from domestic nongovernmental organizations (NGOs) that HNP members allegedly beat or otherwise abused detainees and suspects. Prisoners at times were subjected to degrading treatment, in large part due to overcrowded facilities.

The UN Mission for Justice Support in Haiti (MINUJUSTH) reported several cases of the HNP's use of excessive force. On September 10, local media and civil society organizations accused the HNP of beating and mistreating three detainees in St. Michel De L'Attalaye, Artibonite Department, leading to the death of Nickson Jeune. HNP officials denied responsibility, stating the individual had already been beaten when the local council representative brought the three suspects to the police station. As of September 18, the HNP was investigating the incident.

Detainees were subject to cruel, inhuman, and degrading treatment by being placed in overcrowded, poorly maintained, and unsanitary prisons and makeshift detention centers.

In contrast with 2017, there were no allegations of sexual exploitation and abuse by MINUJUSTH police officers and staff. MINUJUSTH officials attributed this in part to its zero-tolerance policy that included training, raising awareness, and enforcement.

According to the United Nations, three allegations of sexual exploitation and abuse against Bangladeshi peacekeepers from 2015-2017 remained pending. The cases alleged both sexual exploitation (exploitative relationship, transactional sex) and abuse (sexual assault against minors) involving peacekeepers deployed in MINUSTAH in Haiti and MONUSCO in the Congo. Two allegations have been substantiated according to UN investigations. The peacekeepers in question were

repatriated by the United Nations. The investigations by Bangladesh were pending at year's end.

### **Prison and Detention Center Conditions**

Prisons and detention centers throughout the country are life threatening and overcrowded, poorly maintained, and unsanitary. MINUJUSTH reported on September 6 that prisons and detention centers operated at a 365-percent occupancy rate.

Physical Conditions: Prison and detention center overcrowding was severe, especially in the National Penitentiary and the prison in Cap Haitien, where each prisoner had 4.2 square feet of space. In many prisons detainees slept in shifts due to lack of space. Some prisons had no beds for detainees, and some cells had no access to natural light. In other prisons the cells often were open to the elements or lacked adequate ventilation. Many prison facilities lacked basic services such as plumbing, sanitation, waste disposal, medical services, potable water, electricity, adequate ventilation, lighting, and isolation units for contagious patients. Some prison officials used chlorine to sanitize drinking water, but in general prisoners in older prisons did not have access to treated drinking water. Most prisons had insufficient sewage facilities for their populations.

Prison conditions generally varied by gender; female inmates in coed prisons received proportionately more space in their cells than their male counterparts. Female prisoners also experienced a better quality of life than did their male counterparts due to their smaller numbers. Local human rights organizations reported, however, that female detainees showered within view of male corrections officers.

As of August the Department of Corrections (DAP) held approximately 550 prisoners in makeshift and unofficial detention centers, such as police stations in Petit-Goave, Miragoane, Gonaives, and some parts of Port-au-Prince. Local authorities held suspects in makeshift facilities, sometimes for extended periods, without registering them with the DAP.

Corrections authorities in Port-au-Prince maintained separate penitentiaries for adult men, women, and minors. In Port-au-Prince all male prisoners under 18 years of age were held at the juvenile facility at Delmas 33, but due to the lack of sufficient documentation, authorities could not always verify the ages of detainees. At times authorities detained minors believed to be older, and whose ages they

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could not confirm, with adult inmates. Authorities moved the vast majority of these minors to juvenile detention centers within two months of verifying their ages. Due to lack of space, resources, and oversight outside the capital, authorities sometimes did not separate juveniles from adult prisoners or convicted prisoners from pretrial detainees, as the law requires.

International and local observers indicated prisoners and detainees continued to suffer from a lack of basic hygiene, malnutrition, poor quality health care, and water-borne illness. According to a 2017 estimate (the most recent available), 10 percent of the nationwide prison population suffered from malnutrition and severe anemia, while sanitation-related diseases, including scabies, diarrhea, and oral infections, were commonplace. Because of poor security, severe understaffing, and conditions in some detention centers, prison officials did not allow prisoners out of their cells for exercise. In the National Penitentiary, prisoners spent approximately an hour outside of confinement, but in all other facilities, prisoners only had 15-20 minutes to bathe before returning to their cells.

Prisoners' access to adequate nutrition remained a problem. The HNP has contractual and fiscal responsibility for the delivery of food to prisons. Human rights observers alleged that delays in fund disbursement and payments to contracted food suppliers reduced the number of meals fed to prisoners. Additionally, human rights groups accused prison officials of selling food intended for prisoners on the open market. Some prisons had kitchen facilities and employed persons to prepare and distribute food. Prison authorities generally provided prisoners with one or two meals a day, consisting of broth with flour dumplings and potatoes, rice and beans, or porridge. None of the regular meals served to prisoners provided sufficient calories, according to medical standards. Authorities allowed prisoners regular deliveries of food from relatives and friends.

As of October, MINUJUSTH reported 100 deaths in custody, whereas a prominent local human rights organization reported 120 deaths in detention over the same period. Most died from starvation, anemia brought on by malnutrition, tuberculosis, or other communicable diseases. Exact causes of death were difficult to ascertain, as the government did not regularly perform autopsies on deceased detainees. A government commission was created in February 2017 to investigate deaths due to prison conditions, but as of November, the commission's findings were not published.

Most detention facilities had only basic clinics and lacked the medications for treatment of illnesses and diseases contracted while in custody. Few prisons had

the resources to treat serious medical situations. Some very ill prisoners were treated at hospitals outside of prisons, but many hospitals were reluctant to take prisoners, as there was no formal arrangement between the Ministry of Justice and the Ministry of Health regarding payment for treatment.

Administration: The country's independent human rights monitoring body, the Office of Citizen Protection (OPC), maintained a presence at several prison facilities and advocated for the rights and better conditions of prisoners, especially juveniles in preventive detention, and investigated credible allegations of inhuman conditions. The OPC regularly visited prisons and detention facilities throughout the country and worked closely with NGOs and civil society groups.

Independent Monitoring: The DAP permitted MINUJUSTH, local human rights NGOs, and other organizations to monitor prison conditions. These institutions and organizations investigated allegations of abuse and mistreatment of prisoners.

Improvements: The DAP added 93 new corrections officers in the year, increasing its force by more than 7 percent, as a measure to alleviate insufficient staffing. In July a group of approximately 20 DAP corrections officers prevented 4,200 detainees from escaping the National Penitentiary in Port-au-Prince. In previous years DAP corrections officers failed to prevent prison escapes or responded to prison disturbances with excessive force, notably in Les Cayes in 2010, where DAP officers killed or wounded numerous prisoners during a prison riot.

#### **d. Arbitrary Arrest or Detention**

The law prohibits arbitrary arrest and detention, but it does not provide for the right of any person to challenge the lawfulness of his or her arrest or detention in court. The constitution stipulates that authorities may arrest a person only if apprehended during the commission of a crime or based on a warrant issued by a competent official, such as a justice of the peace or magistrate. Authorities must bring the detainee before a judge within 48 hours of arrest. By routinely holding prisoners in prolonged pretrial detention, authorities often failed to comply with these provisions.

The law requires that authorities refer all cases involving allegations of police criminal misconduct to the HNP's Office of the Inspector General (OIG). Senior police officials acknowledged receipt of several complaints alleging abuses committed by officers during the year but noted that financial, staffing, and

training limitations prevented the institution from readily addressing all reports of such misconduct.

Local human rights groups reported detainees were often held in detention after completing their sentence due to difficulty obtaining a release order from the prosecutor's office. For example, Jean-Louis Duckenson was convicted for using an illegal substance and received a six-month sentence. After completing his sentence, he remained in detention for an additional eight months because the paperwork for his release had not been processed.

### **Role of the Police and Security Apparatus**

Domestic security is maintained by the HNP, an autonomous civilian institution under the authority of a director general. The HNP includes police, corrections, fire, emergency response, airport security, port security, and coast guard functions. The Ministry of Justice and Public Security, through its minister and the secretary of state for public security, provides oversight to the HNP. The Superior Council of the National Police, chaired by the prime minister, provides oversight and strategic guidance to the HNP. The Superior Council also includes the HNP director general, HNP inspector general, minister of the interior, and minister of justice.

The HNP took steps toward imposing systematic discipline on officers found to have committed abuses or fraud, but civil society representatives continued to allege widespread impunity. The HNP held monthly press conferences that served as awareness campaigns to inform the public of their roles and responsibilities and to report on cases of misconduct. The OIG maintained a 24-hour hotline to receive public reports of police corruption or misconduct. The OIG sends these complaints to the HNP director general for approval and then to the Ministry of Justice, which decides whether to accept their recommendation. While government officials stated the Ministry of Justice nearly always accepted their recommendations, human rights groups complained there was no way to verify the complaints because there is no official case tracking after the complaints are transferred to the HNP director general.

As of September 15, the OIG for the HNP had reviewed 415 complaints against officers, of which 157 were recommended for suspension and 22 recommended for dismissal, including dismissal recommendations for officers accused of human rights violations, which was double the number of officers recommended for dismissal during the same period in 2017. Observers attributed the increase in

officers recommended for dismissal to stronger accountability measures and capacity within the OIG to receive and process complaints. According to MINUJUSTH human rights officials, there were 25 confirmed cases of human rights violations by the HNP from October 2017 to September. MINUJUSTH and civil society groups reported that while HNP officers at times faced administrative sanctions, there were no judicial proceedings against officers suspected of human rights violations.

The HNP Sexual and Gender-Based Violence (SGBV) unit remained underresourced and understaffed. The unit had two satellite offices at Fort National and Delmas 33. The HNP assigned officers who received SGBV training to serve as regional SGBV representatives in all 10 departments. These officers had minimal links to the SGBV unit in Port-au-Prince.

MINUJUSTH consisted of seven former police units, comprising 295 individual police officers and 980 other personnel. Initiated in October 2017, MINUJUSTH has a mandate to work with the government to develop the HNP, strengthen the rule of law, and promote human rights.

Foreign governments and other entities continued to provide a wide variety of training and other types of assistance to improve police professionalism, including increasing respect for human rights. The HNP continued to expand its outreach to and relations with local populations in Port-au-Prince by supporting the community policing unit. The unit aimed to implement policing strategies to reduce crime and to foster positive police-populace communication over aggressive interdiction.

### **Arrest Procedures and Treatment of Detainees**

The law permits police officers to make arrests with a court- or prosecutor-authorized warrant, or when officers apprehend a suspect in the process of committing a crime.

While authorities generally acknowledged the right to counsel, most detainees could not afford a private attorney. Some departmental bar associations and legal assistance groups provided free counsel. Some NGO attorneys also provided free legal services. The criminal procedure code does not allow for a functional bail system.

Arbitrary Arrest: Independent reporting confirmed instances in which, contrary to law, police without warrants or with improperly prepared warrants apprehended persons not actively committing crimes. Authorities frequently detained individuals on unspecified charges. Human rights organizations reported politicians routinely influenced judicial decisions and used the justice system to target political opponents. Persons arrested reported credible cases of extortion, false charges, illegal detention, physical violence by HNP personnel, and judicial officials' refusal to comply with basic due process requirements.

Pretrial Detention: Prolonged pretrial detention remained a serious problem. The judicial system rarely observed the constitutional mandate to bring detainees before a judge within 48 hours. In some cases detainees spent years in detention without appearing before a judge. Prison population statistics did not include the large number of persons held in police stations around the country for longer than the 48-hour maximum initial detention period. Of the approximately 11,650 prison inmates, 74 percent were held in pretrial detention. Pretrial detention was significantly more prevalent in Port-au-Prince; as of August 30, authorities had yet to try 89 percent of Port-au-Prince's inmates.

Many pretrial detainees had never consulted with an attorney, appeared before a judge, or been given a docket timeline. Time spent in pretrial detention varied significantly by geographic jurisdiction.

Detainee's Ability to Challenge Lawfulness of Detention Before a Court: There is no explicit habeas corpus law, although the constitution stipulates it is illegal for an individual to be detained for more than 48 hours without being seen by a judge. The OPC's national and 12 regional offices worked on behalf of citizens to verify that law enforcement and judicial authorities respected the right to due process. When authorities detained persons beyond the maximum allotted 48 hours and OPC representatives learned of the case, they intervened on the detainee's behalf to expedite the process. The OPC did not have the resources to intervene in all cases of arbitrary detention.

#### **e. Denial of Fair Public Trial**

The law provides for an independent judiciary, but senior officials in the executive and legislative branches exerted significant influence on the judicial branch and law enforcement. Local and international NGOs repeatedly criticized the government for attempting to influence judicial officials. As executive-appointed prosecutors could prevent cases from being seen by judges, the judges themselves



faced less direct executive pressure in making decisions. Nonetheless, civil society organizations reported judges were often fearful of ruling against powerful interests due to fears for their personal security. The justice system was crippled by delays in the appointment of judges, and observers indicated that six of the 12 positions in the Supreme Court remained vacant. In the lower courts, the executive branch renewed the mandates of 50 of the 140 expired mandates for judges. Additionally, pervasive and longstanding problems, primarily stemming from a lack of judicial oversight and professionalism, contributed to a large backlog of criminal cases.

On August 28, observers reported most casework in the First Instance Court of Port-de-Paix stopped in the capital of the North West Department, due to a shortage of judges. Observers also confirmed several judges in Port-de-Paix were working with expired mandates. By law decisions taken by judges with expired mandates are invalid.

Internal political divisions as well as organizational, funding, and logistical problems often hampered the efficient functioning of the Superior Council of the Judiciary (CSPJ). The CSPJ is charged with independently overseeing judicial appointments, the discipline of judges, ethics issues, and management of the judiciary's financial resources.

Observers stated the CSPJ was ineffective in providing judicial accountability and transparency. The CSPJ sanctioned eight judges during the year and only 30 judges since 2012. Local observers accused the CSPJ of functioning as a union for judges rather than focusing on oversight, transparency, and accountability. As members of the CSPJ are elected by their peers, civil society groups claimed CSPJ members focused on re-election rather than on executing their functions and were often reticent to sanction judges due to fear of damaging their chances of maintaining their position on the CSPJ. MINUJUSTH reported the performance of the CSPJ was affected by an unclear division of labor with the Ministry of Justice and Public Security, budgetary constraints, and allegations of interference by other branches of power.

The code of criminal procedure does not clearly assign criminal investigation responsibility, which it divides among police, justices of the peace, prosecutors, and investigating magistrates. As a result, authorities often failed to question witnesses, complete investigations, compile complete case files, or conduct autopsies. While the law provides investigative judges two months to request additional information from investigators, they often did not follow this

requirement and frequently dropped cases or did not return them within the two-month limit. This resulted in prolonged pretrial detention for many detainees.

By law each of the country's 18 jurisdictions should convene jury and nonjury trial sessions twice per year, usually held in July and December, for trials involving major violent crimes. During a case heard at a jury trial session, the court can decide to postpone the hearing to the next session for any reason--often because witnesses were not available. In these cases, defendants are returned to prison until the next jury trial session. Human rights groups highlighted the poor treatment of defendants during the criminal trials, saying that in some jurisdictions, defendants spent the entire day without food and water.

Corruption and a lack of judicial oversight also severely hampered the judiciary. Human rights organizations reported several judicial officials, including judges and court clerks, arbitrarily charged fees to initiate criminal prosecutions and that judges and prosecutors failed to respond to those who could not afford to pay. There were credible allegations of unqualified and unprofessional judges who received appointments as political favors. There were also persistent accusations that court deans, who are responsible for assigning cases to judges for investigation and review, at times assigned politically sensitive cases to judges with close ties to figures in the executive and legislative branches. Many judicial officials also held full-time occupations outside the courts, although the constitution bars judges from holding any other type of employment except teaching.

### **Trial Procedures**

The constitution provides for the right to a fair and public trial, but the judiciary did not enforce this right. The judiciary follows a civil law system based on the Napoleonic Code, largely unchanged since 1835. The constitution denies police and judicial authorities the right to interrogate suspects unless legal counsel or a representative of the suspect's choice is present or the suspect waives this right. Authorities, however, widely ignored certain constitutionally provided trial and due process rights.

The constitution provides defendants a presumption of innocence, as well as the right to attend trial, confront hostile witnesses, and call witnesses and evidence on their own behalf. Defendants cannot be compelled to testify or confess guilt. Judges often denied these rights. The perception of widespread impunity also discouraged some witnesses from testifying at trials. Defendants have the right of appeal. Defendants also have the right to communicate with an attorney of their

choice; however, legal aid programs were limited, and those who could not pay for attorneys were not always provided one free of charge. While French and Haitian Creole are both official languages of Haiti, the majority of legal proceedings and all laws are in French, despite the most commonly spoken language being Haitian Creole. Observers noted, however, that judges often spoke to the defendant in Haitian Creole to facilitate comprehension.

The functioning of justice of peace courts, the lowest courts in the judicial system, was inadequate. Judges presided in chamber based on their personal availability and often maintained separate, full-time jobs. Law enforcement personnel rarely maintained order during court proceedings, and frequently there was no court reporter. Bribes were often the principal factor in a judge's decision to hear a case.

In many communities, especially in rural areas, elected communal administrators took the place of state judges and asserted powers of arrest, detention, and issuance of legal judgments. Some communal administrators turned their offices into courtrooms.

### **Political Prisoners and Detainees**

There were no credible reports of political prisoners or detainees.

### **Civil Judicial Procedures and Remedies**

Victims of alleged human rights abuses may bring their cases before a judge. Courts can award damages for human rights abuse claims brought in civil fora, but seeking such remedies was difficult and rarely successful.

Cases involving violations of an individual's human rights may be submitted through petitions by individuals or organizations to the Inter-American Commission of Human Rights, which in turn may submit the case to the Inter-American Court of Human Rights.

### **Property Restitution**

There was one highly publicized report that the government failed to provide proportionate and timely restitution or compensation for governmental confiscation of private property.

According to an August 9 RNDDH press statement, seven families were displaced when their houses in Pelerin 5, a neighborhood in Port-au-Prince, were demolished on July 2-4 at the request of the prosecutor for Port-au-Prince, Clame Ocnam Dameus, without a court order. Prosecutor Dameus stated the houses were unlawfully constructed on state-owned land and represented a threat to the security of President Moïse and his family, who lived in the area. Former Pelerin 5 residents along with civil society groups disputed the claim that they illegally occupied state-owned land. As of September 15, seven of the 34 houses ordered destroyed had been demolished, and local authorities had turned off utility services to the remaining houses.

**f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence**

The law prohibits such actions, and there were no reports that the government failed to respect these prohibitions.

**Section 2. Respect for Civil Liberties, Including:**

**a. Freedom of Expression, Including for the Press**

The constitution guarantees freedom of expression and press. Government officials and private actors sometimes restricted this freedom.

Press and Media Freedom: There were isolated incidents of actions against journalists by national and local government officials. As a result, some independent media believed they were unable to criticize the government freely.

On March 14, Vladjimir Legagneur, an independent journalist, went missing after entering Grand-Ravine, a gang-controlled area of Port-au-Prince, to pursue a story about gang activities. Following his disappearance, journalists organized marches and called for a full investigation. On April 5, police announced two arrests in the case while waiting for results from forensic testing on “fresh” human remains found in the area where Legagneur was last seen. The results of the forensic exam were still pending as of October. As of September 15, the HNP had arrested four persons, including a schoolteacher in the area where Legagneur disappeared, in connection with the case.

Violence and Harassment: Some journalists were subjected to threats, harassment, and physical assault allegedly due to their reporting. In some instances government authorities participated in these acts.

On August 20, government officials alleged parliament had been attacked by persons with small arms fire and a grenade. Within a few days, however, various media establishments questioned the official narrative, since a preliminary investigation concluded the shots had likely come from inside the building. During the investigation tensions flared between police investigators and parliamentary security personnel, and the latter attempted to bar journalists from covering those exchanges by grabbing and blocking their cameras to prevent them from filming the incident. In the melee security agent Ernst Lee Raphael allegedly assaulted journalist Frantz Cineus of Television Pacific and damaged a camera. The presidents of both chambers of parliament publicly apologized after the initial events, and Raphael was fired. Following the incident, several journalists noted what they described as constant threats from security agents at the parliament who blamed journalists for the public's negative perception of parliament.

Censorship or Content Restrictions: There were few allegations of censorship by the government. In March the National Telecommunications Board closed 10 radio stations accused of operating without a license. One such station, Radio Planete, alleged the decision was politically motivated, since one of their journalists hosted a show critical of the government handling of Petro Caribe financing (see section 4). The telecommunications board's president denied the accusations and reiterated his determination to combat "pirate" stations.

### **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authorization. Socioeconomic and infrastructure hurdles contributed to the dominance of radio and, to a lesser extent, television, over the internet.

According to the International Telecommunication Union, approximately 12 percent of citizens used the internet in 2017.

### **Academic Freedom and Cultural Events**

In May an NGO focused on rights for lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons said it was barred from hosting a panel discussion on LGBTI issues at the Cap-Haitian State University campus, a government university, even though payment had been accepted for the event.

#### **b. Freedoms of Peaceful Assembly and Association**

The constitution provides for freedoms of peaceful assembly and association, and the government generally respected these rights.

#### **Freedom of Peaceful Assembly**

The constitution provides for freedom of assembly, and the government generally respected this right. There were several instances when police used force to impose order during demonstrations. Citizens must apply for a permit to hold legal demonstrations. Although impromptu political demonstrations in some instances provoked aggressive law enforcement responses, police generally responded to these protests in a professional and effective manner.

Following the July 6-7 protests against the government's decision to increase fuel prices, Port-au-Prince prosecutor Dameus ordered the arrest of 64 individuals accused of looting. These individuals included three who were living on property owned by opposition senator Antonio Cheramy. Some members of the opposition called the arrests politically motivated and illegal because a prosecutor can arrest only individuals caught in the process committing a crime. Dameus denied the allegations of "political persecution" and stated the persons arrested were caught carrying numerous items that had been looted from various stores. The detainees were subsequently released.

#### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/religiousfreedomreport/](http://www.state.gov/religiousfreedomreport/).

#### **d. Freedom of Movement**

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. The government cooperated with international and humanitarian organizations, as well as other countries, in providing protection and assistance to internally displaced

persons (IDPs), refugees, returning refugees, asylum seekers, stateless persons, or other persons of concern.

### **Internally Displaced Persons (IDPs)**

Of all the IDP camps created following the 2010 earthquake, 3 percent remained. Nearly all IDPs were in the Port-au-Prince metropolitan area, although several hundred persons also remained displaced by Hurricane Matthew's destruction of the country's South Department in 2016. The International Organization for Migration (IOM) estimated that more than 37,500 individuals (more than 9,000 households) still resided in IDP camps as of September.

Although the IOM reported progress in the relocation of nearly all Hurricane Matthew IDPs, the rate of camp closures and relocation remained slow. According to a May estimate, 90 percent of those residing in the camps had limited or no access to basic hygiene and health services. IOM statistics showed that the overall post-2010 earthquake IDP population had decreased more than 97 percent from its peak in 2010.

MINUJUSTH's police force presence in the country did not include a mobile team for IDP camp security patrols, which left the HNP to administer security in the remaining IDP camps. The IOM reported the HNP did not patrol IDP camps, but instead responded only in cases of emergency. Overall, there had not been a stable security force presence in the IDP camps since the departure of MINUSTAH forces in late 2017, although IDP camp residents formed committees to monitor their communities at night and to address cases of gender-based violence. The IOM reported that IDPs liaised directly with the HNP during emergencies.

### **Protection of Refugees**

Access to Asylum: The law provides for the granting of refugee status or asylum through Haitian missions or consulates abroad. Third-country nationals can also petition for asylum through the local office of the UN High Commissioner for Refugees (UNHCR). According to the UNHCR representative, there were fewer than 20 such cases in process.

### **Stateless Persons**

A lack of coordination between the various ministries that administer the dysfunctional civil registry system and weak consular capacity made obtaining

documentation difficult for individuals living inside or outside the country. Due to these systemic deficiencies, many Haitians living abroad without other citizenship or permanent residency were effectively stateless or at risk of statelessness in their country of residence. Undocumented persons of Haitian descent continued to face difficulties in establishing their legal residency or citizenship in countries such as the Dominican Republic and the Bahamas, which occasionally resulted in the deportation or spontaneous return of individuals with a claim to non-Haitian citizenship. Despite improved passport delivery domestically, obtaining nationality documents from the Haitian government remained particularly challenging for Haitian migrants living in the Dominican Republic (DR) seeking to participate in the DR's migrant regularization plan.

### **Section 3. Freedom to Participate in the Political Process**

The law provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

#### **Elections and Political Participation**

Recent Elections: Legislative, municipal, and presidential elections were completed in late 2016. While there were isolated allegations of voter fraud, the elections were generally regarded as credible. Although voter turnout was low, citizens generally accepted the elections, and public demonstrations against the election results were muted compared with previous years.

Political Parties and Political Participation: There were more than 100 political parties and platforms, 57 of which had elected officials at some level. The government was taking modest measures to reduce the number of parties, including by providing public funding to parties that meet certain criteria, although this was not intended to restrict overall citizen participation in politics. Certain political parties exercised undue influence at the local level, including through threats to journalists and civil society organizations.

Participation of Women and Minorities: No laws limit the participation of women or members of minorities in the political process; however, social norms and the threat of electoral violence discouraged women from voting and, to a much greater extent, from running for office. The constitution requires that at least 30 percent of elected officials be women, but both chambers of parliament fell well short of this quota (3 percent in the Senate, 2.5 percent in the Chamber of Deputies). Local elections, in which candidates run in groups that must include at least 30 percent



women to be on the ballot, did reach the quota. Civil society organizations noted female political candidates had little access to campaign financing and that female participation in politics was hindered by cultural norms that reject female participation in politics.

#### **Section 4. Corruption and Lack of Transparency in Government**

The law criminalizes a wide variety of corruption-related offenses by officials, including illicit enrichment, bribery, embezzlement, illegal procurement, insider trading, influence peddling, and nepotism. There were numerous reports of government corruption and a perception of impunity for abusers. The judicial branch investigated several cases of corruption, but there were no prosecutions during the year. The government fired 21 assistant prosecutors due to corruption allegations. The perception of corruption remained widespread in all branches of government and at all levels.

Corruption: The constitution mandates that the Senate (vice the judicial system) prosecute high-level officials and parliament members accused of corruption. As of year's end, no government had ever prosecuted a high-level official for corruption.

In October 2017 a report by the Special Senate Committee of Inquiry on the Mismanagement of Petro Caribe Funds alleged between 2008 and 2016 the government mismanaged close to two billion dollars in Petro Caribe funds designed to develop the country. In February the Senate requested that the Administrative Court of Auditors and Administrative Disputes investigate the allegations. The court was due to publish a report on the findings of its investigation in January 2019.

In August 2017 President Jovenel Moise fired Minister of Social Affairs and Labor Roosevelt Bellevue for alleged corruption related to the overinflated price of government-purchased school kits. On August 10, the Anticorruption Unit sent its report to the judiciary. The report cited numerous violations of public procurement laws by government officials and determined that the then minister of economy and finance, Jude Alix Salomon, issued an illegal waiver to justify school kit purchases. The report did not, however, support a finding of overbilling for the school kits. On August 15, the Superior Court of Audits and Administrative Disputes implicated Bellevue in the school kits affair.

Financial Disclosure: The law requires all senior government officials to file financial disclosure forms within 90 days of taking office and within 90 days of leaving office. There is no requirement for periodic reporting. Disclosure reports are confidential and not available to the public. The sanction for failure to file financial disclosure reports is a withholding of 30 percent of the official's salary, but the government did not sanction any officials during the year or in any previous year. Government officials stated the requirement was not always followed.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights**

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials generally cooperated in addressing the views of various human rights groups, although they disagreed at times on the scope of certain human rights problems and the most appropriate means of addressing human rights issues. The government generally consulted human rights groups, including the OPC, on legislative matters.

Government Human Rights Bodies: The OPC's mandate is to investigate allegations of human rights abuse and work with international organizations, including MINUJUSTH, to implement programs to improve human rights. The OPC's regional representatives implemented assistance programs throughout the country. Several civil society organizations commended the efforts of the OPC to engage the government and civil society organizations on human rights. Nonetheless, the OPC's activities were restricted by its small budget, effectively limiting its ability to execute its mandate. As of September the government had not acted on any of the recommendations OPC had made.

During the 38th session of the Human Rights Council in July, the government announced the minister of justice and public security would be the government's focal point person for human rights and was tasked with implementing human rights reforms. Following the confirmation of Prime Minister Jean Henry Ceant in September, however, former minister of social affairs and labor Stephanie Auguste was named minister delegate to the prime minister in charge of human rights and the fight against extreme poverty. In this role, Minister Delegate Auguste was to function as the government's human rights focal point.

The Chamber of Deputies has a Justice, Human Rights, and Defense Commission, while the Senate has a Justice, Security, and Defense Commission that also covers human rights issues.

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

### **Women**

Rape and Domestic Violence: While the law prohibits rape of men or women, it does not recognize spousal rape as a crime. The penalty for rape is a minimum of 10 years of forced labor. In the case of gang rape, the maximum penalty is lifelong forced labor. Actual sentences were often less rigorous. The criminal code excuses a husband who kills his wife or her partner found engaging in an act of adultery in his home, but a wife who kills her husband under similar circumstances is subject to prosecution.

The law does not classify domestic violence against adults as a distinct crime. Women's rights groups and human rights organizations reported domestic violence against women remained commonplace. Judges often released suspects arrested for domestic violence and rape.

In February the OPC reported that the First Instance Court of Jeremie, the largest city and capital of Grand'Anse Department, released 16 of 29 individuals accused of rape. The prosecutor for Jeremie, Bergemane Sylvain, allegedly dropped charges against the accused with the justification that the victims had signed statements withdrawing their claims. The OPC criticized Sylvain's decision, saying that the law does not allow for compromise in criminal matters and that the victim's retraction cannot stop a prosecution. The accused remained free at year's end.

Victims of rape and other forms of sexual violence faced major obstacles in seeking legal justice, as well as in accessing protective services, such as women's shelters. Civil society organizations reported that while women were more likely to report cases of sexual and domestic violence than in the past, many victims failed to report such cases due to a lack of financial resources. Additionally, due to familial responsibilities, victims were usually unable to dedicate the time necessary to follow through with legal proceedings. According to some civil society organizations, many local nonprofit organizations that provided shelter, medical and psychological services, and legal assistance to victims had to reduce services due to a lack of funding.

On September 6, MINUJUSTH reported an increase in the number of sexual and gender-based violence cases investigated. They reported that between January and August, 149 cases were investigated, compared with 181 investigations in all of 2017. Nonetheless, there were reports that in rural areas, criminal cases, including cases of sexual violence, were settled out of court. According to MINUJUSTH, prosecutors often encouraged such settlements.

Sexual Harassment: The law does not specifically prohibit sexual harassment, although the labor code states that men and women have the same rights and obligations. Observers indicated sexual harassment occurred frequently.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization.

Discrimination: The law does not provide for the same legal status and rights for women as for men. Women did not enjoy the same social and economic status as men, despite the constitutional amendments recognizing the principle of at least 30 percent women's participation in national life and notably in public service.

By law men and women have equal protections for economic participation. In practice, however, women faced barriers to accessing economic inputs and securing collateral for credit, information on lending programs and resources.

## **Children**

Birth Registration: Citizenship is derived through an individual's parents; only one parent of either sex is necessary to transmit citizenship. Citizenship can also be acquired through a formal request to the Ministry of the Interior. The government did not register all births immediately. Birth registry is free until the age of two years. Approximately 30 percent of children between the ages of one and five lacked birth certificates or any other official documentation. Children born in rural communities were less likely to be documented than those in urban areas.

Education: Constitutional provisions require the government to provide free and compulsory education for all children up to grade nine (when students are approximately age 16); however, the government did not effectively enforce these provisions. Eight of 10 children who attended school did so at private, often religious institutions. The quality of those institutions varied widely because the government lacked the means to inspect them.

Child Abuse: The law prohibits domestic violence against minors. The government continued to lack sufficient resources and an adequate legal framework to support or enforce existing mechanisms to promote children's rights and welfare fully, but it made some progress in institutionalizing protections for children.

The most recent study launched by the Ministry of Social Affairs and Labor, published in 2015, estimated there were 286,000 children working in indentured domestic servitude (referred to as restaveks), a form of trafficking in persons. Furthermore, restaveks were often victims of psychological, physical, and sexual abuse. The National Child Welfare Institute (IBESR), along with the HNP's specialized Child Protection Bureau (BPM), were tasked with protecting the welfare of children. Their efforts were limited, however, by small budgets and inadequate personnel.

For more information, see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/) and the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/reports/child-labor/findings/](http://www.dol.gov/ilab/reports/child-labor/findings/).

Early and Forced Marriage: The legal age of marriage is 18 years. No data was available regarding early and forced marriage, but childhood and forced marriage was not a widespread custom.

Sexual Exploitation of Children: The minimum age for consensual sex is 18 years, and the law has special provisions for rapes of persons who are 16 years or younger. The law prohibits the corruption of youth under 21, including prostitution, with penalties ranging from six months to three years of imprisonment for offenders. The law prescribes prison sentences of seven to 15 years of imprisonment and a fine ranging from 200,000 to 1.5 million Haitian Gourdes (HTG) (\$2,900 to \$21,600). The penalty for human trafficking with aggravating circumstances, which includes cases involving the exploitation of children, is up to life imprisonment.

According to a September 6 MINUJUSTH report, the majority of reported victims of sexual violence were underage girls. There were some reported instances of boys being raped. Several civil society groups reported children living in impoverished conditions were often subjected to sexual exploitation and abuse. According to these groups, children were often forced into prostitution or lured into transactional sex to fund basic needs such as school related expenses.

Recruitment of children for sexual exploitation and pornography is illegal, but the United Nations reported criminal gangs recruited children as young as 10 years of age.

On June 13, the government announced it had permanently banned international NGO Oxfam from operating in the country following allegations that Oxfam employees had engaged in sexual misconduct and abuse during the 2010 earthquake response. There were allegations that some of the victims may have been minor children.

Institutionalized Children: The IBESR has official responsibility for monitoring and accrediting the country's orphanages and residential care centers. According to international NGO Lumos, an estimated 25,000 children lived in the more than 750 orphanages in the country. An estimated 80 percent of those children had at least one known parent who was alive. In October the IBESR announced that only 35 of the more than 750 orphanages it inspected were compliant with the minimum standards for child care. The IBESR attempted to close the most egregious orphanages but could only do so as quickly as they could find placement for the children. In 2017 government officials closed four abusive orphanages that housed 116 children and potentially involved trafficking and placed 51 children from those orphanages into foster care; the remainder were returned to their families. The government accredited 96 families for its newly developed foster care program to make children less vulnerable to trafficking or being revictimized. Local and international antitrafficking organizations noted, however, that the government had not provided appropriate resources to develop enough transitional centers or other temporary housing and care facilities.

There are different provisions for juvenile offenders. Children under 13 are not held responsible for their actions, and until age 16, they cannot be held in adult prisons or share their cells. Instead, juvenile offenders were placed in re-education centers with the objective of successful societal reinsertion. There were two rehabilitation centers, both in Port-au-Prince, called CERMICOL. As of August approximately 200 minors were in CERMICOL.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data.html>.

**Anti-Semitism**

The Jewish community numbered fewer than 100 persons, and there were no reports of anti-Semitic acts.

**Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

**Persons with Disabilities**

The constitution stipulates that persons with disabilities should have the means to provide for their autonomy, education, and independence. The law prohibits discrimination in employment practices against persons with disabilities, requires the government to integrate such persons into the state's public services, and imposes a 2 percent quota for persons with disabilities in the workforces of private-sector companies. This quota was not met, as the government did not enforce these legal protections.

Local disabilities rights advocates stated that persons with disabilities faced significant obstacles to vote, as they had difficulty obtaining a national identification card, a requirement to vote, because the National Identification Office was inaccessible to persons with disabilities.

Individuals with disabilities faced significant social stigma because of their disability. Persons with mental or developmental disabilities were marginalized, neglected, and abused in society. The Office of the Secretary of State for the Integration of Handicapped Persons (BSEIPH), which falls under the Ministry of Social Affairs and Labor, is the lead government agency responsible for providing assistance to persons with disabilities and ensuring their civil, political, and social inclusion.

The BSEIPH had several departmental offices outside the capital, and it effectively lobbied the government to pass legislation to benefit persons with disabilities. Nonetheless, its efforts were constrained by a limited budget, and there was little progress to create of a strategic development plan to guide the institutions efforts. The BSEIPH provided persons with disabilities with legal advice and job counseling services. It regularly convened meetings with disabilities rights groups in all of its regional offices.

Some disabilities rights activists called the social services available to persons with disabilities inadequate, adding that access to quality medical care posed a significant challenge for persons with disabilities. Hospitals and clinics in Port-au-Prince did not have sufficient space, human resources, or public funds to treat such individuals.

### **Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**

No laws criminalize sexual orientation or consensual same-sex conduct between adults. There are no antidiscrimination laws to protect LGBTI persons from discrimination based on sexual orientation or gender identity.

There were no reports of police officers actively perpetrating or condoning violence against LGBTI individuals. Some LGBTI groups reported the HNP and judicial authorities were inconsistent in their willingness to document or investigate LGBTI persons' claims of abuse. HNP academy instructors taught police officers to respect the rights of all civilians without exception. The curriculum specifically trained new officers on crimes commonly committed against the LGBTI community. As a result, some civil society leaders noticed a marked improvement in the efforts of the HNP's Gender and Community Police Units to address the needs of the LGBTI community.

In August the office of an LGBTI rights organization was attacked by an individual shouting anti-LGBTI slogans. According to the organization, the attacker came to request financial assistance and when the organization refused, he attacked the office. The assailant returned the next day with other armed individuals to set fire to the office. The organization stated local police officers were slow to offer assistance and that at one point, an officer asserted there was no evidence of the alleged attack. The organization's coordinator said he went to file a complaint with the local justice of the peace, who made anti-LGBTI remarks before referring him to the court clerk, who requested a bribe to begin the investigation.

Local attitudes remained hostile toward LGBTI individuals who were public and visible about their sexual orientation or gender identity and expression, particularly in Port-au-Prince. Some politicians, societal leaders, and organizations actively opposed the social integration of LGBTI persons and discussion of their rights. LGBTI advocacy groups in Port-au-Prince reported a greater sense of insecurity and less trust of government authorities than did groups in rural areas.



## **HIV and AIDS Social Stigma**

According to a 2017 Center for Disease Control-sponsored stigma index, 57 percent of women and 54 percent of men said they would deny HIV-positive children entrance to schools with HIV-negative children, and 65 percent of women and 64 percent of men said they would not buy vegetables from persons with HIV.

## **Other Societal Violence or Discrimination**

MINUJUSTH and numerous civil society organizations reported gang violence continued to increase, particularly in impoverished areas of Port-au-Prince such as Martissant and Grand-Ravine. MINUJUSTH reported that, between June and August, there were seven gang-related incidents reported, compared with three from the same period in 2017.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

Labor relations are established and regulated by a special provision of the 1961 labor code as revised in 1984. The code provides for the right of some workers, excluding public-sector employees, to form and join unions of their choice and strike, with restrictions. The code allows for collective bargaining and requires employers to conclude a collective contract with a union if that union represents two-thirds of the workers and requests a contract. Strikes are legal provided they are approved by at least one-third of a company's workers. The code prohibits firing workers based on union activities, and employers are subject to a monetary fine for each individual violation. The code does not, however, require employers to reinstate workers illegally fired for union activity, although illegally fired workers have the right to recoup any compensation to which they are entitled.

The code places several restrictions on workers' rights. It requires that any union obtain prior authorization from the government to be recognized. The code limits legal strikes to four types: striking while remaining at post, striking without abandoning the institution, walking out and abandoning the institution, and striking in solidarity with another strike. Public utility service workers and public-sector enterprise workers may not strike. The code defines public utility service employees as essential workers who "cannot suspend their activities without causing serious harm to public health and security." A 48-hour notice period is

compulsory for all strikes, and strikes may not exceed one day. Some groups were able to strike despite these restrictions by being present at their workplace but refusing to work. Furthermore, the law allows for compulsory arbitration at the request of only one party to halt a strike. The code does not cover freelance workers or workers in the informal economy.

The government made efforts to enforce labor laws, although its efforts were not fully effective. Government officials, unions, and factory-level affiliates also continued to expand their dialogue. Labor courts, which function under the supervision of the Ministry of Social Affairs and Labor, are responsible for adjudicating private-sector workplace conflicts. There is one labor court in Port-au-Prince. Outside of Port-au-Prince, plaintiffs have the legal option to use municipal courts for labor disputes. The code requires ministry mediation before filing cases with the labor court. In the case of a labor dispute, the ministry conducts an investigation to determine the nature and causes of the matter and facilitate a resolution. In the absence of a mutually agreed-upon resolution, the matter is referred to court.

During the year the labor ombudsperson for the apparel sector and the Ministry of Social Affairs and Labor provided mediation services to workers and employers in Port-au-Prince, Caracol Industrial Park, and Ouanaminthe. Due to limited capacity and procedural delays in forwarding cases from the Ministry of Social Affairs and Labor to the courts, the mediation services of the apparel sector's labor ombudsperson and the conciliation services of the ministry were often the only official recourse for workers' grievances regarding better pay and working conditions. The labor ombudsperson intervened to improve relationships between employers, workers, and trade union organizations, either upon formal request by workers, unions, or employers' representatives, or based on observations by the International Labor Organization's (ILO) Better Work Haiti (BWH) program. The Office of the Ombudsperson used different methods, including telephone conversations, exchange meetings, factory visits and meetings, and advisory support.

The penalty under the code for interference with union activities is 1,000 to 3,000 HTG (\$14.40 to \$43.20). The fines were not sufficient to deter violations, and authorities did not impose or collect them. During the year the government required some factories to remedy labor violations, including violations related to freedom of association.

Antiunion discrimination persisted, although to a lesser extent than in previous years. Workers continued to report acts of suspension, termination, and other retaliation by employers on the grounds of legitimate trade union activities, membership, collective action, and other associational activity.

There were strikes and other work stoppages in the apparel sector during the year, including disruptions in several facilities in Port-au-Prince and the North and Northeast departments as workers launched demonstrations prior to and following the announcement of the new minimum wage in October.

The ILO and International Finance Corporation's BWH program noted incidents of employer interference in union activity.

### **b. Prohibition of Forced or Compulsory Labor**

The law prohibits all forms of forced or compulsory labor; however, the government did not effectively enforce the law in all sectors of the economy. The labor ombudsperson, however, did not record any instances of intimidation or employer abuse. Penalties for violations of forced labor laws range from 1,000 to 3,000 HTG (\$14.40 to \$43.20) but were insufficient to deter violations.

There were reports that forced or compulsory labor occurred, specifically, instances of forced labor among child domestics, or restaveks (see section 7.c.). Children in the following situations were vulnerable to forced labor: private and NGO-sponsored residential care centers; workers in construction, agriculture, fisheries, domestic work, and street vending; IDPs, including those displaced by Hurricane Matthew and the 2010 earthquake; members of female-headed, single-parent, or large families; and LGBTI youth often left homeless and stigmatized by their families and society (see section 7.c.).

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The minimum age for employment in industrial, agricultural, or commercial companies is 15 years. The minimum age for work outside of these three sectors is 14, although children 12 and older may work for up to three hours per day outside of school hours in family enterprises, under supervision from the Ministry of Social Affairs and Labor. The law allows children age 14 to be contracted

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apprentices; children 14 to 16 may not work as apprentices more than 25 hours a week. A September 2017 amendment to the labor code stated that it is illegal to employ children under the age of 16; however, it was unclear whether this provision would supersede the older statutes that create the sectoral exceptions mentioned above.

The law prohibits young persons and children from performing any work that is likely to be hazardous; interferes with their education; or is harmful to their physical, mental, spiritual, moral, or social health and development, including the use of children in criminal activities. The law also prohibits minors from working under dangerous or hazardous conditions, such as mining, construction, or sanitation services, and it prohibits night work in industrial enterprises for minors under 18. The September 2017 amendment doubles penalties for employing underage children at night. Prohibitions related to hazardous work, however, omit major economic sectors, including agriculture. No apparel factories were reported noncompliant with respect to child labor during the year. A report by the ILO's BWH for the period of October 2017 to October 2018, however, found two cases of noncompliance for child labor because two factories failed to request proper identification for some workers during the hiring process.

There are no legal penalties for employing children in domestic labor. The law requires employers to pay domestic workers over age 15, thereby allowing employers of domestic workers to use "food and shelter" as a means of unregulated compensation for those under 15.

Persons between the ages of 15 and 18 seeking employment must obtain a work authorization from the Ministry of Social Affairs and Labor unless they are employed in domestic service. The labor code provides for penalties for failure to follow procedures, such as obtaining work authorization to employ minors between 15 and 18 legally, but it does not provide penalties for the employment of underage children. The limited penalties of between 3,000 and 5,000 HTG (\$43 to \$72) were not sufficient deterrents to protect children against labor exploitation.

The Ministry of Social Affairs and Labor, through the IBESR, is responsible for enforcing child labor laws. While enduring resource constraints hindered the IBESR's ability to conduct effective child labor investigations, the IBESR and the BPM responded to reports of abuse in homes and orphanages where children worked. The government does not report on investigations into child labor law violations or the penalties imposed. Although the government and international donors allocated supplemental funds for the IBESR to acquire a new administrative

space and hire more staff, the IBESR continued to lack sufficient social protection programs and effective legislation to eliminate the worst forms of child labor.

New members were appointed to the National Tripartite Committee against Child Labor, which included civil society actors, unions, and employers to address the issue of child labor and discuss the challenges associated with implementing new laws on child labor. As of September the committee had failed to meet due to lack of cohesion among labor union representatives.

The BPM is responsible for investigating crimes against children and referred exploited and abused children to the IBESR and partner NGOs for social services. Although the BPM has the authority to respond to allegations of abuse and apprehend persons reported as exploiters of child domestic workers, the BPM did not pursue restavek cases for investigation because there are no legal penalties it could impose on those who exploited children in these cases. A law with specific protections for child trafficking victims does not exist.

Children under age 15 commonly worked in the informal sector to supplement family income. Activities and sectors in which children worked included domestic work, subsistence agriculture, and street trades, such as selling goods, washing cars, serving as porters in public markets and bus stations, and begging. Children also worked with parents on small family farms, although the high unemployment rate among adults kept significant numbers of children from employment on commercial farms.

The worst forms of child labor, including forced child labor, continued to be problematic and endemic--particularly in domestic service. Exploitation of restaveks typically included families forcing them to work excessive hours on physically demanding tasks without commensurate pay or adequate food, refusing to provide an education, and subjecting them to physical or sexual abuse. Girls were often placed in domestic servitude in private urban homes by parents who were unable to provide for them, while boys more frequently were exploited for labor on farms. Restaveks who did not run away from families usually remained with them until the age of 14. Many families forced restaveks to leave before age 15 to avoid paying them wages as required by law. Others ignored the law, often with impunity.

Working on the streets exposed children to a variety of hazards, including severe weather, vehicle accidents, and crime. Abandoned and runaway restaveks constituted a significant proportion of the population of children living on the

street, many of whom criminal gangs exploited in prostitution or street crime, while others became street vendors or beggars.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/reports/child-labor/findings/](http://www.dol.gov/ilab/reports/child-labor/findings/).

#### **d. Discrimination with Respect to Employment and Occupation**

The constitution provides for freedom of work for all citizens and prohibits discrimination based on sex, origin, religion, opinion, or marital status. For public-sector employment, the constitution sets a minimum quota of 30 percent for women. The labor code does not define employment discrimination, although it sets out specific provisions with respect to the rights and obligations of foreigners and women such as the conditions to obtain a work permit, foreign worker quotas, and provisions related to maternity leave. The law does not prohibit discrimination based on disability, language, sexual orientation or gender identity, social status, or HIV-positive status.

The government took some steps to enforce the laws through administrative methods, such as through the Ministry of Women's Conditions and the BSEIPH. In the private sector, several work areas, which had been predominantly male oriented, began employing female workers at the same pay scale, including the public transportation and construction industries. Despite these improvements, discrimination related to gender remained a major concern, although there was no governmental assessment or report of work abuses. During the BWH's most recent assessment of 28 factories between October 2017 and October, one case of noncompliance related to gender discrimination was identified. The factory where the case occurred took immediate action following the assessment to terminate the harassers. The BWH reported improvement in addressing sexual harassment, although this remained an issue of concern in the industry.

#### **e. Acceptable Conditions of Work**

The law provides for a national minimum wage. The Superior Wage Council published new minimum wage levels on October 8. The current daily minimum wage for all sectors ranges from 215 HTG (\$3.00) per day for domestic workers to 500 HTG (\$7.20) per day in certain professions, including finance, telecommunications, and private educational institutions. In the apparel export sector, the minimum daily wage was set at 420 HTG (\$6.00). At 215 HTG, the

national minimum wage for domestic workers was slightly above the official poverty income level.

In September 2017 the parliament passed a new law that organizes and regulates work over a 24-hour period divided into three 8-hour shifts known as the (3\*8 law). This law set the standard workday at eight hours and the workweek at 48 hours for industrial, commercial, agricultural, and tourist establishments as well as for public and private utilities. The 3\*8 law repealed numerous provisions of the labor code, including those that covered working time, overtime payment, weekly rest day, and certain paid annual holidays. According to the ombudsman for industrial affairs, the 3\*8 law did not cause any major shift in the labor market and needed additional government circulars to guarantee its implementation.

The law establishes minimum health and safety regulations and requires certain provisions in regards to workers' health and safety, including quotas for onsite nurses per factory, permanent medical services, and annual medical checks. The law allows workers to notify the employer of any defect or situation that may endanger their health or safety and to call on the ministry or police if the employer fails to make the necessary ameliorations. Occupational safety and health standards are appropriate for the main industries, but these standards were not always enforced.

Although the law charges the ministry with enforcement of a range of labor-related issues, legislation on wage and hour requirements, standard workweek, premium pay for overtime, and occupational safety and health was not effectively enforced. Penalties were not sufficient to deter violations, and authorities often did not impose them. The penalty for not applying the occupational safety and health provisions of the labor code is 200 to 2,000 HTG (\$2.90 to \$29) or up to three months in prison. The penalty for violating the minimum wage or hours of work provisions of the labor code ranges from 1,000 to 3,000 HTG (\$14.40 to \$43.20). There were no prosecutions for the individuals accused of violating the minimum wage or hours of work.

The ministry's capacity to enforce the labor provisions in national and international law was limited by human resource and other constraints. Labor inspections in the capital and elsewhere faced challenges that included a lack of funding, questionable professionalism, and lack of support from law enforcement.

There were some reports of noncompliance with overtime provisions in apparel factories.

Most citizens worked in the informal sector and subsistence agriculture, for which minimum wage legislation does not apply. There continued to be reports of noncompliance regarding compensation, paid leave, social security and other benefits, contracts, health services and first aid, and worker protection in the industrial and assembly sectors.

Noncompliance with safety and health standards remained a major concern. The ILO BWH program continued to report nearly all factories failed to provide the legally required number of medical facilities and staff. Other noncompliance issues included unsafe storage of chemical and hazardous materials, lack of adequate training regarding handling of chemical and hazardous materials, and lack of protective equipment or safety warning signs.

The ILO BWH program also reported cases where several workers exposed to work-related hazards failed to receive free annual exams. By law the exams are the responsibility of the Office of Labor Insurance, Maternity, and Accident (OFATMA). While some factories began conducting medical checks-up independently, OFATMA continued efforts to increase its capacities and continued performing medical checks at a number of factories. The ILO Better Work Haiti program continued to work with factories, and OFATMA to improve compliance with this requirement.

No group collected formal data, but unions alleged job-related injuries occurred frequently in the construction and public-works sectors.



Code d'Instruction Criminelle

# Code d'instruction criminelle

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**LOI N° 1**  
**SUR LES DISPOSITIONS PRÉLIMINAIRES**

**Article 1er.-** L'action pour l'application des peines n'appartient qu'aux fonctionnaires auxquels elle est confiée par la loi.

L'action en réparation du dommage causé par un crime, par un délit ou par une contravention, peut être exercée par tous ceux qui ont souffert de ce dommage.

**Article 2.-** L'action publique, pour l'application de la peine, s'éteint par la mort du prévenu.

L'action civile, pour la réparation du dommage, peut être exercée contre le prévenu et contre ses représentants.

L'une et l'autre action s'éteignent par la prescription, ainsi qu'il est réglé en la loi N° 8 chapitre V de la prescription.

**Article 3.-** L'action civile peut être poursuivie en même temps et devant les mêmes juges que l'action publique.

Elle peut aussi l'être séparément : dans ce cas, l'exercice en est suspendu tant qu'il n'a pas été prononcé définitivement sur l'action publique intentée avant ou pendant la poursuite de l'action civile.

Le présent article ne déroge point aux dispositions consacrées par le code de commerce, relativement à l'administration des biens des faillis.

**Article 4.-** La renonciation à l'action civile ne peut arrêter ni suspendre l'exercice de l'action publique.

**Article 5.-** Tout Haïtien qui se sera rendu coupable, hors du territoire d'Haïti, d'un crime attentatoire à la sûreté de l'État, de contrefaçon des monnaies nationales ayant cours, de papiers nationaux, de billets de banque autorisés par la loi, sera, aussitôt qu'il sera saisi, poursuivi, jugé et puni en Haïti, d'après les dispositions des lois haïtiennes.

**Article 6.-** Cette disposition sera étendue aux étrangers qui, auteurs ou complices des mêmes crimes, seraient arrêtés en Haïti, ou dont le gouvernement obtiendrait l'extradition.

**Article 7.-** Tout Haïtien qui se sera rendu coupable, hors du territoire de la République, d'un crime contre un Haïtien, sera, à son retour en Haïti, poursuivi et jugé, si déjà il ne l'avait pas été en pays étranger, et si l'Haïtien offensé rend plainte contre lui.

**LOI N° 2**  
**SUR LA POLICE JUDICIAIRE ET LES OFFICIERS ET AGENTS DE**  
**POLICE QUI L'EXERCENT**

**CHAPITRE Ier**  
**DE LA POLICE JUDICIAIRE**



Le juge d'instruction peut requérir la présence du commissaire du gouvernement, sans aucun retard néanmoins des opérations prescrites dans ledit chapitre.

**Article 47.-** Lorsque le flagrant délit aura déjà été constaté, et que le commissaire du gouvernement transmettra les actes et pièces au juge d'instruction, celui-ci sera tenu de faire, sans délai, l'examen de la procédure.

Il peut refaire les actes ou ceux des actes qui ne lui paraissent pas complets.

## Distinction deuxième - **De l'instruction**

### **I. DISPOSITIONS GÉNÉRALES**

**Article 48.-** Hors le cas de flagrant délit, le juge d'instruction ne fera aucun acte d'instruction et de poursuite, qu'il n'ait donné communication de la procédure au commissaire du gouvernement. Il la lui communiquera pareillement, lorsqu'elle sera terminée, et le commissaire du gouvernement fera les réquisitions qu'il jugera convenables, sans pouvoir retenir la procédure plus de trois jours.

Néanmoins, le juge d'instruction délivrera, s'il y a lieu, le mandat d'amener et même le mandat de dépôt sans que ces mandats doivent être précédés des conclusions du commissaire du gouvernement.

**Article 49.-** Lorsque le juge d'instruction se transportera sur les lieux, il sera toujours accompagné du commissaire du gouvernement et assisté du greffier du tribunal.

### **II. DES PLAINTES**

**Article 50.-** Toute personne qui se prétendra lésée par un crime ou un délit, pourra en rendre plainte et se constituer partie civile devant le juge d'instruction, soit du lieu du crime ou délit, soit du lieu de la résidence du prévenu, soit du lieu où il pourra être trouvé.

**Article 51.-** Les plaintes qui auraient été formées devant le commissaire du gouvernement seront par lui transmises au juge d'instruction avec son réquisitoire, celles qui auraient été présentées aux officiers auxiliaires de police seront par eux envoyées au commissaire du gouvernement, et transmises par lui au juge d'instruction, aussi avec son réquisitoire.

Dans les matières du ressort de la police correctionnelle, la partie lésée pourra s'adresser directement au tribunal correctionnel, dans la forme qui sera ci-après réglée.

**Article 52.-** Les dispositions de l'article 21 concernant les dénonciations seront communes aux plaintes.

**Article 53.-** Les plaignants ne seront réputés partie civile, s'ils ne le déclarent formellement, soit par la plainte, soit par un acte subséquent ou s'ils ne prennent, par l'un ou l'autre, des conclusions en dommages-intérêts; ils pourront se départir dans les vingt-quatre heures; dans le cas du désistement, ils ne sont pas tenus des frais depuis

qu'il aura été signifié, sans préjudice néanmoins des dommages-intérêts des prévenus, s'il y a lieu.

**Article 54.-** Les plaignants pourront se porter partie civile en tout état de cause jusqu'à la clôture des débats : mais en aucun cas leur désistement après le jugement ne peut être valable, quoiqu'il ait été donné dans les vingt-quatre heures de leur déclaration qu'ils se portent partie civile.

**Article 55.-** Toute partie civile qui ne demeurera pas dans la commune ou se fait l'instruction, sera tenue d'y élire domicile par acte passé au greffe du tribunal.

À défaut d'élection de domicile par la partie civile, elle ne pourra opposer le défaut de signification contre les actes qui auraient dû lui être signifiés aux termes de la loi.

**Article 56.-** Dans le cas où le juge d'instruction ne serait ni celui du lieu du crime ou du délit, ni celui de la résidence du prévenu, ni celui du lieu où il pourra être trouvé, il renverra la plainte devant le juge d'instruction qui pourrait en connaître.

**Article 57.-** Le juge d'instruction compétent pour connaître de la plainte en ordonnera la communication au commissaire du gouvernement, pour être par lui requis ce qu'il appartiendra.

### III. DE L'AUDITION DES TÉMOINS

**Article 58.-** Le juge d'instruction fera citer devant lui les personnes qui auront été indiquées par la dénonciation, par la plainte, par le commissaire du gouvernement, ou autrement, comme ayant connaissance, soit du crime ou du délit, soit de ses circonstances.

**Article 59.-** Les témoins seront cités par un huissier, ou par un agent de la force publique, à la requête du commissaire du gouvernement.

**Article 60.-** Ils seront entendus séparément, hors de la présence du prévenu, par le juge d'instruction, assisté de son greffier.

**Article 61.-** Ils représenteront, avant d'être entendus, la citation qui leur aura été donnée pour déposer, et il en sera fait mention dans le procès-verbal.

**Article 62.-** Les témoins prêteront serment de dire toute la vérité, rien que la vérité; le juge d'instruction leur demandera leurs noms, prénoms, âge, état, profession, demeure, s'ils sont domestiques, parents ou alliés des parties, et à quel degré il sera fait mention de la demande et des réponses des témoins.

**Article 63.-** Les dépositions seront signées du juge, du greffier et du témoin, après que lecture lui en aura été faite et qu'il aura déclaré y persister : si le témoin ne veut ou ne peut signer, il en sera fait mention.

Chaque page du cahier d'information sera signée par le juge et par le greffier.

**Article 64.-** Les formalités prescrites par les articles précédents seront remplies à peine de dix gourdes d'amende contre le greffier et même s'il y a lieu, de prise à partie contre le juge d'instruction.





Dans les cas urgents, les délais pourront être abrégés, et les parties citées à comparaître même dans le jour, et à l'heure indiquée, en vertu d'une cédule délivrée par le juge de paix.

**Article 128.-** Les parties pourront comparaître volontairement et sur un simple avertissement, sans qu'il soit besoin de citation.

**Article 129.-** (*Loi du 12 juillet 1920*).- Avant le jour de l'audience, le juge de paix pourra, sur la réquisition de la partie civile ou même d'office, estimer ou faire estimer les dommages, dresser ou faire dresser des procès-verbaux, faire ou ordonner tous actes requérant célérité.

**Article 130.-** Si la personne citée ne comparait pas au jour et à l'heure fixés par la citation ou la cédule, elle sera jugée par défaut.

**Article 131.-** La personne condamnée par défaut ne sera plus recevable à s'opposer à l'exécution du jugement, si elle ne se présente à l'audience indiquée par l'article suivant, sauf ce qui sera ci-après réglé sur l'appel et le recours en cassation.

**Article 132.-** L'opposition au jugement par défaut pourra être faite par la déclaration en réponse au bas de l'acte de signification, ou par acte notifié, dans les trois jours de la signification outre un jour par quarante kilomètres.

L'opposition emportera de droit citation à la première audience après l'expiration des délais et sera réputée non avenue, si l'opposant ne comparait pas.

**Article 133.-** La personne citée comparaitra par elle-même ou par un fondé de procuration spéciale.

**Article 134.-** (*Loi du 12 juillet 1920*).- L'instruction de chaque affaire sera publique, à peine de nullité.

Elle se fera dans l'ordre suivant : les procès-verbaux, s'il y en a, seront lus par le greffier. Les témoins, s'il en a été appelé par la partie civile ou le juge seront entendus s'il y a lieu; la partie civile prendra ses conclusions.

La personne citée sera interpellée ou interrogée; elle proposera sa défense et fera entendre ses témoins, si elle en a amené ou fait citer, et si, aux termes de l'article 136, elle est recevable à les produire.

Le tribunal de police prononcera le jugement dans l'audience du jour où l'instruction aura été terminée, ou, au plus tard, dans l'audience suivante.

**Article 135.-** Les contraventions seront prouvées, soit par procès-verbaux ou rapports, soit par témoins, à défaut de rapports ou de procès-verbaux à leur appui.

**Article 136.-** Nul ne sera admis, à peine de nullité, à faire preuve par témoins outre ou contre le contenu aux procès-verbaux ou rapports des officiers et agents de police ayant reçu de la loi le pouvoir de constater les crimes délits ou contraventions, jusqu'à inscription de faux.

Quant aux procès-verbaux et rapports faits par des agents, préposés ou officiers auxquels la loi n'a pas accordé le droit d'en être crus jusqu'à inscription de faux, ils



**Article 290.-** (*Loi du 12 juillet 1920*).- Lorsque l'accusé aura été déclaré non coupable, le tribunal prononcera qu'il est acquitté de l'accusation, et ordonnera qu'il soit mis en liberté, s'il n'est retenu pour autre cause.

Le tribunal statuera ensuite sur les dommages-intérêts, respectivement prétendus après que les parties auront proposé leurs fins de non-recevoir ou leurs défenses, et que le Ministère public aura été entendu..

Le tribunal pourra néanmoins, s'il le juge nécessaire, renvoyer à une audience ultérieure, même en dehors de la session, l'instruction et le jugement de la demande en dommages-intérêts.

L'accusé acquitté pourra aussi obtenir des dommages-intérêts contre ses dénonciateurs, pour faits de calomnie; sans néanmoins que les autorités constituées puissent être ainsi poursuivies à raison des avis qu'elles sont tenues de donner concernant les infractions dont ils ont pu acquérir la connaissance dans leurs fonctions et sauf contre eux la demande en prise à partie, s'il y a lieu.

Le commissaire du gouvernement sera tenu, sur la réquisition de l'accusé, de lui faire connaître ses dénonciateurs.

**Article 291.-** (*Loi du 12 juillet 1920*).- Les demandes en dommages-intérêts formées soit par l'accusé contre ses dénonciateurs ou la partie civile contre l'accusé ou le condamné, seront portées au tribunal criminel.

La partie civile est tenue de former sa demande en dommages-intérêts avant le jugement; plus tard, elle sera non recevable.

Il en sera de même de l'accusé, s'il a connu son dénonciateur avant le jugement. S'il ne l'a connu que depuis le jugement, il portera sa demande devant le tribunal civil en la forme ordinaire.

À l'égard des tiers qui n'auraient pas été partie au procès, ils s'adresseront également au tribunal civil.

**Article 292.-** Toute personne acquittée légalement ne pourra plus être reprise ni accusée, à raison du même fait.

**Article 293.-** Lorsque dans le cours des débats l'accusé aura été inculpé sur un autre fait, soit par des pièces, soit par les dépositions des témoins, le Doyen du tribunal criminel, après avoir prononcé qu'il est acquitté de l'accusation ordonnera, sur la réquisition du Ministère public, ou même d'office, qu'il sera poursuivi à raison du nouveau fait : en conséquence, il le renverra en état de mandat d'arrêt, s'il y échet, devant le juge d'instruction du ressort pour être procédé à une nouvelle instruction.

**Article 294.-** (*Loi du 12 juillet 1920*).- Lorsque l'accusé aura été déclaré coupable, le commissaire du gouvernement fera sa réquisition au tribunal pour l'application de la loi.

La partie civile posera ses conclusions à fin de restitution et de dommages-intérêts.

**Article 295.-** (*Loi du 12 juillet 1920*).- Le Doyen du tribunal criminel demandera à l'accusé s'il n'a rien à dire pour sa défense.



ou s'il est dans l'impossibilité absolue de se rendre, ses parents ou ses amis pourront présenter son excuse et en plaider la légitimité.

**Article 370.-** Si le tribunal trouve l'excuse légitime, il ordonnera qu'il sera sursis au jugement de l'accusé et au séquestre de ses biens pendant un temps qui sera fixé en égard à la nature de l'excuse et à la distance des lieux.

**Article 371.-** Hors ce cas, il sera procédé de suite à la lecture de l'ordonnance de renvoi au tribunal criminel, de l'acte de notification de l'ordonnance ayant pour objet la représentation du contumax, et des procès-verbaux dressés pour constater la publication et l'affiche.

Après cette lecture, le tribunal sur les conclusions du Ministère public, prononcera sur la contumace.

Si l'instruction n'est pas conforme à la loi, le tribunal la déclarera nulle, et ordonnera qu'elle sera recommencée, à partir du plus ancien acte illégal.

Si l'instruction est régulière, le tribunal prononcera sur l'accusation, et statuera sur les intérêts civils, le tout sans assistance ou intervention de jurés.

**Article 372.-** Si le contumax est condamné, ses biens seront à partir de l'exécution du jugement, considérés et régis comme biens d'absent; et le compte du séquestre sera rendu à qui il appartiendra après que la condamnation sera devenue irrévocable par l'expiration du délai pour purger la contumace.

**Article 373.-** Extrait du jugement de condamnation sera, dans les trois jours de la prononciation, à la diligence du Ministère public, affiché aux portes des tribunaux et sur les places publiques du lieu ou le crime aura été commis.

Pareil extrait sera, dans le même délai, adressé à l'administrateur des finances du domicile du contumax.

**Article 374.-** Le recours en cassation ne sera ouvert contre les jugements de contumace qu'au Ministère public et à la partie civile, en ce qui la regarde.

**Article 375.-** En aucun cas, la contumace d'un accusé ne suspendra ni ne retardera de plein droit l'instruction à l'égard de ses co-accusés présents.

Le tribunal pourra ordonner, après le jugement de ceux-ci, la remise des effets déposés au greffe comme pièces de conviction, lorsqu'ils seront réclamés par les propriétaires ou ayants droit.

Il pourra aussi ne l'ordonner qu'à charge de représenter, s'il y a lieu.

Cette remise sera précédée d'un procès-verbal de description dressé par le greffier, à peine de vingt gourdes d'amende.

**Article 376.-** Durant le séquestre, il peut être accordé des secours à la femme, aux enfants, au père ou la mère de l'accusé, s'ils sont dans le besoin.

Ces secours seront réglés par l'autorité administrative, sauf recours des intéressés, par-devant les tribunaux compétents, si le cas y échet.

Code Pénal

Code pénal

## PRÉFACE

Le Code pénal haïtien, ainsi que le Code d'instruction criminelle, ont été répertoriés dans le but d'appuyer la formation des magistrats de l'École nationale de la magistrature d'Haïti à Port-au-Prince.

Cette version n'a aucune valeur officielle.

Elle est été produite par le ministère de la Justice du Canada.

## LOI No. 1 SUR LES DISPOSITIONS GÉNÉRALES

Article 1er.- L'infraction que les lois punissent de peines de police est une contravention.- C. civ. 5.- Inst. crim. 1, 11, 124, 135, 468 et suiv.- C. pénal 4, 383 et suiv.

L'infraction, que les lois punissent de peines correctionnelles, est un délit.- C. civ. 1095, 1133, 1168 et suiv., 1812.- Inst. crim. 1 à 4, 155 et suiv., 465, 467, 469 et suiv.- C. pén. 3, 4, 9, 26 et suiv., 41, 42 et suiv.

L'infraction, que les lois punissent d'une peine afflictive ou infamante, est un crime.- Inst. crim. 109 et suiv., 301, 307, 466 et suiv.- C. pén. 2, 4, 6, 7, 12 et suiv., 31 et suiv., 40 et suiv., 44 et suiv., 57 et suiv.

Art. 2.- Toute tentative de crime qui aura été manifestée par des actes extérieurs et suivie d'un commencement d'exécution, si elle n'a été suspendue ou n'a manqué son effet que par des circonstances fortuites ou indépendantes de la volonté de l'auteur, est considérée comme crime, et sera punie de la réclusion, dont la durée sera proportionnée à la gravité du cas.- C. pén. 1, 7, 40, 20, 58.

Art. 3.- Les tentatives de délits ne sont considérées comme délits que dans les cas déterminés par une disposition spéciale de la loi.- C. pén. 29, 34, 140, 337.

Art. 4.- Nulle contravention, nul délit, nul crime ne peuvent être punis de peines qui n'étaient pas prononcées par la loi, avant qu'ils fussent commis.- C. civ. 2.- C. pén. 1, 7, 26, 382, 383.

Art. 5.- Les dispositions du présent code ne s'appliquent pas aux contraventions, délits et crimes militaires.- C. pén. 40.





### SECTION III - DESTRUCTION, DÉGRADATION, DOMMAGES

Art. 356.- Quiconque aura volontairement mis le feu à des édifices, navires, bateaux, magasins, chantiers, lorsqu'ils sont habités ou servent à l'habitation et généralement aux lieux habités ou servant à l'habitation, qu'ils appartiennent ou n'appartiennent pas à l'auteur du crime sera puni de travaux forcés à perpétuité. (Ainsi modifié par le décret du 4 Juillet 1988).

Sera puni de la même peine, quiconque aura volontairement mis le feu, soit à des voitures ou wagons contenant des personnes, soit à des voitures ou wagons ne contenant pas des personnes, mais faisant partie d'un convoi qui en contient.

Quiconque aura volontairement mis le feu à des édifices, navires, bateaux, magasins, chantiers, lorsqu'ils ne sont ni habités ni servant à l'habitation, ou à des forêts, bois, taillis ou récoltés sur pied, lorsque ces objets ne lui appartiennent pas, sera puni de la peine des travaux forcés à perpétuité.

Celui qui, en mettant, ou en faisant mettre le feu à l'un des objets énumérés dans le paragraphe précédent et à lui-même appartenant, aura volontairement causé un préjudice à autrui, sera puni des travaux forcés à temps.

Sera puni de la même peine, celui qui aura mis le feu sur l'ordre du propriétaire.

Quiconque aura volontairement mis le feu, soit à des récoltes, en tas ou en meule, soit à des bois disposés en tas ou en stère, soit à des voitures ou wagons chargés ou non chargés de marchandises, ou autres objets mobiliers et ne faisant point partie d'un convoi contenant des personnes, si ces objets ne lui appartiennent pas, sera puni des travaux forcés à temps.

Celui qui en mettant ou en faisant mettre le feu à l'un des objets énumérés dans le paragraphe précédent et à lui-même appartenant, aura volontairement causé un préjudice quelconque à autrui sera puni de la réclusion.

Sera puni de la même peine, celui qui aura mis le feu sur l'ordre du propriétaire.

Celui qui aura communiqué l'incendie à l'un des objets énumérés dans les précédents paragraphes, en mettant volontairement le feu à l'un des objets quelconques appartenant soit à lui, soit à autrui, et placés de manière à communiquer le dit incendie, sera puni de la même peine que s'il avait directement mis le feu à l'un des dits objets.

Dans tous les cas, si l'incendie a causé la mort d'une ou de plusieurs personnes, se trouvant dans les lieux incendiés au moment ou il a éclaté, la peine sera les travaux forcés à perpétuité. (Ainsi modifié par le décret du 4 Juillet 1988).

La peine sera la même, d'après les distinctions faites dans les précédents paragraphes, contre ceux qui auront détruit, par l'effet d'une mine, des édifices ou navires.- C. pén. 7 L. 25 Juillet 1878.

Art. 357.- La menace d'incendier une maison ou toute autre propriété sera puni de la peine portée contre la menace d'assassinat, et d'après les distinctions établies par les articles 250, 251 et 252.- C. pén. 7-3°, 102.

Art. 358.- Quiconque aura volontairement détruit ou renversé, par tous autres moyens que ceux mentionnés en l'article 356, en tout ou en partie, des édifices, des ponts, digues ou chaussées, ou autres constructions qu'il savait appartenir à autrui, sera puni de la réclusion, et d'une amende qui ne pourra excéder le quart des restitutions et indemnités, ni être au dessous de vingt-quatre gourdes.- C. pén. 7-5°, 10, 17, 20, 36.

S'il y a eu homicide ou blessures, le coupable sera dans le premier cas, puni de travaux forcés à perpétuité (ainsi modifié par le décret du 4 Juillet 1988), et dans le second, puni de travaux forcés à temps.- C. pén. 7-1°, 3°, 12, 15, 18, 19, 240, 254.

Art. 359.- Quiconque, par des voies de fait, se sera opposé à la confection des travaux autorisés par le Gouvernement, sera puni d'un emprisonnement de deux mois à deux ans, et d'une amende qui ne pourra excéder le quart des dommages-intérêts, ni être au-dessous de seize gourdes.- C. civ. 939, 1168.- C. pén. 9-1°, 10, 26 et suiv., 36, 382, 383.

Les auteurs subiront le maximum de la peine.

Art. 360.- Quiconque aura volontairement brûlé ou détruit d'une manière quelconque, des registres, minutes, ou actes originaux de l'autorité publique, des titres, billets, lettres de change, effets de commerce ou de banque contenant ou opérant obligation, disposition, ou décharge, sera puni ainsi qu'il suit :

Si les pièces détruites sont des actes de l'autorité publique, ou des effets de commerce ou de banque, la peine sera la réclusion.- C. civ. 97, 98.- C. pén. 7-5°, 10, 15, 19, 20.

S'il s'agit de toute autre pièce, le coupable sera puni d'un emprisonnement d'un an à trois ans.- C. pén. 10, 26 et suiv., 36.

Art. 361.- Tout pillage, tout dégât de denrées ou marchandises, effets, propriétés mobilières, commis en réunion ou en bande et à force ouverte, sera puni des travaux forcés à temps.- C. pén. 7-3°, 15, 19, 20, 36, 73, 215, 382.

Art. 362.- Si les denrées pillées ou détruites sont des grains, grenailles, ou farines, substances farineuses, pain, vin, ou autre boisson, la peine que subiront les chefs, instigateurs, ou provocateurs seulement, sera le maximum des travaux forcés à temps.- C. pén. 7-3°, 15, 19, 20, 365 et suiv., 370.

Commission Interaméricaine de droit de l'homme, Résolution 26/2015, Affaire  
Juders Ysemé et autres au sujet d'Haïti (July 28, 2015) [Plaintiffs\_0000540-  
45]

**COMMISSION INTERAMÉRICAINNE DES DROITS DE L'HOMME**  
**RÉSOLUTION 26/2015**  
**MESURE CONSERVATOIRE N°275-15**

Affaire Juders Ysemé et autres au sujet d'Haïti  
28 juillet 2015

**I. INTRODUCTION**

1. Le 2 juillet 2015, la Commission interaméricaine des droits de l'homme (ci-après « la Commission interaméricaine », « la Commission » ou « la CIDH ») a reçu une demande de mesures conservatoires présentée par la Clinique internationale des droits de l'homme Allard K. Lowenstein de la faculté de droit de l'Université de Yale, le Bureau des Avocats Internationaux et l'Institut pour la justice et la démocratie en Haïti (ci-après « les requérants »), priant la CIDH d'exiger de l'État haïtien (ci-après « Haïti » ou « l'État ») qu'il adopte les mesures de protection nécessaires pour garantir la vie et l'intégrité personnelle de David Boniface, Nissage Martyr et Juders Ysemé, ainsi que de leurs proches et des autres personnes dans la même situation (ci-après « les bénéficiaires »). D'après la demande, les bénéficiaires proposés auraient été confrontés à une série de faits présumés de violence et de menace perpétrés à leur encontre, suite à des plaintes déposées contre le maire de la ville de Les Irois.

2. Après avoir analysé les arguments de fait et de droit avancés par les requérants, la Commission considère que les informations présentées démontrent, *prima facie*, que David Boniface, Nissage Martyr et Juders Ysemé se trouvent dans une situation grave et urgente, compte tenu du fait que leur vie et leur intégrité personnelle sont en danger. Par conséquent, conformément à l'article 25 du Règlement de la CIDH, la Commission demande à Haïti : a) d'adopter les mesures nécessaires afin de protéger la vie et l'intégrité personnelle de David Boniface, Nissage Martyr et Juders Ysemé, ainsi que des membres de leur famille proche ; b) d'adopter les mesures nécessaires afin que les bénéficiaires puissent exécuter leurs activités en tant que défenseurs des droits humains sans être l'objet d'actes de violence et de harcèlement ; c) de fixer les mesures à adopter avec les bénéficiaires et leurs représentants ; et d) de faire part des actions adoptées afin d'enquêter sur les faits allégués ayant donné lieu à l'approbation de la présente mesure conservatoire et, ainsi, d'éviter qu'ils ne se reproduisent.

**II. RÉSUMÉ DES FAITS ET ARGUMENTS AVANCÉS PAR LES REQUÉRANTS**

3. Selon les requérants, les bénéficiaires proposés auraient déposé une série de plaintes contre le maire par intérim de la ville de Les Irois et des personnes liées à cet homme. Suite aux plaintes, ils auraient été l'objet d'actes présumés de violence et de menace ces dernières années. Les faits dénoncés par les requérants qui sont susceptibles de mettre en danger la vie et l'intégrité personnelle des bénéficiaires proposés sont résumés ci-dessous :

A. Comme contexte, les requérants ont informé la CIDH que le groupe appelé « KOREGA » (« Coordination de la résistance de Grande-Anse ») aurait eu recours, en 2006, à des tactiques de violence et de fraude, notamment l'achat présumé de votes, afin de garantir la victoire de son candidat aux élections municipales de Les Irois. Ils précisent qu'après la victoire de ce candidat, le groupe KOREGA aurait continué d'utiliser des tactiques de violence contre l'opposition politique.

B. Le 27 juillet 2007, le professeur David Boniface serait intervenu en tant qu'observateur judiciaire dans un procès contre le maire concernant l'agression présumée d'une femme. D'après la demande de mesures conservatoires, le bénéficiaire proposé aurait obtenu la permission des autorités de témoigner devant la Cour en faveur de cette femme. En quittant le

tribunal, il aurait été menacé et poursuivi par des membres du groupe KOREGA. Cette nuit-là, son frère aurait été assassiné, prétendument par des membres de la milice à la recherche de David Boniface.

C. Nissage Martyr et Juders Ysemé auraient fait l'objet d'actes présumés de violence suite à la création de la première radio communautaire de Les Irois, laquelle émettait prétendument dans l'une des chambres du domicile privé de Nissage Martyr. Selon les requérants, le jour de l'inauguration de la radio, le maire aurait publiquement déclaré son intention de l'interdire. Le 8 avril 2008, le maire et 30 membres du groupe KOREGA se seraient présentés armés à la station de radio et auraient emporté tout le matériel de radio-transmission. Nissage Martyr et Juders Ysemé, qui se seraient trouvés à la station de radio à ce moment-là, auraient été gravement agressés, notamment avec des armes à feu. Suite à cette agression présumée, il se serait avéré nécessaire d'amputer Nissage Martyr de sa jambe. De même, Juders Ysemé aurait perdu de manière irréversible la vue d'un œil.

D. Le 29 octobre 2009, les membres de la KOREGA auraient attribué la mort du responsable du personnel de la mairie à des malédictions vaudou lancées par des opposants politiques au maire. Par conséquent, la milice aurait mis le feu à 36 maisons, dont celles des trois bénéficiaires proposés.

E. D'après la demande de mesures conservatoires, les bénéficiaires auraient dénoncé les actes de violence décrits ci-dessus. Suite à cette dénonciation, une enquête judiciaire aurait été ouverte contre le maire et 18 membres de la KOREGA. Au cours de l'enquête, les membres de la milice auraient menacé et harcelé les témoins et les victimes présumées. Par exemple, ils se seraient rendus au domicile de la voisine de David Boniface après qu'elle a témoigné devant les autorités, et l'auraient gravement frappée.

F. Malgré des irrégularités présumées dans les procédures, l'enquête aurait abouti à la condamnation de six personnes. Cependant, suite à ces irrégularités, une Cour d'appel aurait décidé en 2012 d'ouvrir un nouveau procès. Une fois la date fixée pour l'audience, les bénéficiaires et leurs familles auraient été l'objet de menaces et d'actes de harcèlement. D'après la demande de mesures conservatoires, il se serait produit les faits suivants :

i) À de multiples reprises, le maire aurait menacé David Boniface, Nissage Martyr et Juders Ysemé ainsi que leurs familles. Il leur aurait en particulier dit qu'il était au-dessus de la loi et qu'il était inutile et dangereux qu'ils cherchent justice. De plus, le maire et ses conseillers auraient exercé des pressions sur le directeur de l'école où enseigne David Boniface pour qu'il le renvoie et auraient menacé de tirer sur le père de Juders Ysemé, si ce dernier continuait de travailler comme pêcheur. Des membres de la KOREGA auraient également menacé de couper l'autre jambe de Nissage Martyr.

ii) Le 29 mars 2015, trois membres de la KOREGA, qui auraient participé aux événements présumés d'avril 2008 liés à l'attaque de la radio communautaire, seraient allés au domicile de Nissage Martyr. Ils auraient lancé des pierres sur la façade de la maison, en criant « Le mois prochain, nous allons terminer ce que nous avons commencé en avril 2008 ».

iii) Le 14 avril 2015, les trois bénéficiaires proposés auraient donné une conférence de presse afin de mieux faire connaître les procédures liées au nouveau procès. Une semaine après, un ami de David Boniface, l'aurait averti que des personnes de l'entourage du maire auraient déclaré qu'elles se rendraient à son église pour « l'enlever » car lui et les autres leur causaient des problèmes et qu'il était nécessaire « d'en finir ». Depuis lors, des hommes armés auraient commencé à se rendre à l'église que fréquente David Boniface. Par conséquent, ce dernier aurait cessé d'y aller.

iv) Le 30 avril 2015, alors qu'il était à l'école, un des fils de Nissage Martyr aurait reçu des menaces de la part d'un groupe de 40 hommes liés au maire, lesquels lui auraient lancé des pierres et des mangues. Par conséquent, les fils du bénéficiaire proposé auraient cessé de fréquenter l'école.

v) Le 11 juin 2015, plusieurs hommes liés au maire se seraient postés devant les maisons des trois bénéficiaires proposés. Des hommes armés auraient parcouru la rue et hurlé ouvertement des menaces, qui auraient été entendues par les bénéficiaires proposés, leurs voisins et les passants. Concrètement, la demande de mesures conservatoires affirme que les hommes ont crié « Maintenant, on ne va plus se contenter de brûler des maisons, on va aussi couper des têtes ». Par conséquent, les trois bénéficiaires proposés auraient fui leur domicile et vivraient actuellement cachés.

vi) Les requérants indiquent que l'approche des élections locales, en plus de l'ouverture des nouveaux procès, contribuerait à augmenter les risques que rencontrent les bénéficiaires proposés.

### **III. ANALYSE DES ÉLÉMENTS DE GRAVITÉ, D'URGENCE ET D'IRRÉPARABILITÉ**

4. Le mécanisme de mesures conservatoires fait partie des fonctions de la Commission consistant à contrôler le respect des obligations en matière de droits humains établies à l'article 106 de la Charte de l'Organisation des États Américains. Ces fonctions générales de contrôle sont établies à l'article 41 (b) de la Convention américaine relative aux droits de l'homme, repris également à l'article 18 (b) du Statut de la CIDH tandis que le mécanisme de mesures conservatoires est décrit à l'article 25 du Règlement de la Commission. Conformément audit article, la Commission octroie des mesures conservatoires dans les situations qui s'avèrent graves et urgentes et dans lesquelles ces mesures sont nécessaires pour prévenir un dommage irréparable aux personnes.

5. La Commission interaméricaine et la Cour interaméricaine des droits de l'homme (ci-après « la Cour interaméricaine » ou « la CIDH ») ont établi de manière réitérée que les mesures conservatoires et provisoires présentent un double caractère : un caractère de précaution et un caractère de protection. En ce qui concerne le caractère de protection, les mesures conservatoires cherchent à prévenir un dommage irréparable et à protéger l'exercice des droits humains. En ce qui concerne le caractère de précaution, les mesures conservatoires visent à préserver une situation juridique pendant qu'elle est examinée par la CIDH. Le caractère de précaution a pour objectif et finalité de protéger les droits susceptibles d'être en danger et ce, jusqu'à la résolution de la pétition qui fait l'objet d'un examen au sein du Système interaméricain. Son objectif et sa finalité consistent à garantir l'intégrité et l'effectivité de la décision de fond et, ainsi, d'éviter de porter atteinte aux droits exercés, situation qui pourrait rendre sans effet la décision finale ou en dénaturer l'effet utile. Dans ce sens, les mesures conservatoires ou provisoires permettent à l'État concerné d'exécuter la décision finale et, en cas de nécessité, de s'acquitter des réparations exigées. Aux effets de prendre une décision, et conformément à l'article 25.2 de son Règlement, la Commission estime que :

- a. La « gravité de la situation » signifie l'impact sérieux qu'une action ou omission peut avoir sur un droit protégé ou sur l'effet éventuel d'une décision pendante dans une affaire ou pétition devant les organes du Système interaméricain ;
- b. L'« urgence de la situation » est déterminée par l'information indiquant que le risque ou la menace sont imminents et peuvent se matérialiser, ce qui exige une action préventive ou conservatoire ; et
- c. Le « dommage irréparable » signifie l'effet adverse sur les droits qui, en raison de sa nature, ne sont pas susceptibles de réparation, de restauration ou d'être indemnisés de manière adéquate.

6. Dans la présente affaire, la CIDH estime que la condition de gravité est remplie au vu des menaces et faits de violence présumés dont auraient été victimes David Boniface, Nissage Martyr et Juders Ysemé, ainsi que les membres de leur famille proche. En particulier, les informations communiquées indiquent que, suite à une série de plaintes qu'ils ont déposées contre le maire de la municipalité et les membres d'un groupe appelé « KOREGA », les bénéficiaires feraient l'objet de représailles. À ce sujet, les antécédents présumés de violence indiquent que Nissage Martyr et Juders Ysemé auraient été victimes, le 8 avril 2008, d'actes de violence qui auraient causé de graves séquelles à leur intégrité personnelle. D'après la demande de mesures conservatoires, la supposée spirale de violence se serait poursuivie et actuellement David Boniface, Nissage Martyr et Juders Ysemé continueraient de subir en permanence des menaces. Dans ces circonstances, sont particulièrement importantes les informations indiquant que les auteurs présumés des faits connaîtraient l'adresse et les habitudes des bénéficiaires et que les menaces récentes concerneraient les membres de la famille proche de David Boniface, Nissage Martyr et Juders Ysemé. La dernière menace, signalée le 11 juin 2015 et proférée devant le domicile des bénéficiaires, aurait été formulée de la manière suivante : « Maintenant, on ne va plus se contenter de brûler des maisons, on va aussi couper des têtes ».

7. Dans le cadre de l'examen de la présente demande, la Commission observe que les informations communiquées par les requérants correspondraient aux informations de caractère général que la CIDH a reçues par le biais d'audiences publiques<sup>1</sup> et lors de l'élaboration du Rapport de suivi sur la situation des droits de la personne en Haïti pour l'année 2010<sup>2</sup>. Dans le cadre de ces mécanismes, la Commission interaméricaine a pris note de la situation de violence et d'impunité en Haïti, laquelle toucherait divers secteurs de la société, en particulier les défenseurs des droits de la personne. À ce sujet, la Commission interaméricaine a demandé, de manière générale, à l'État haïtien de « s'assurer que les défenseurs des droits de la personne bénéficient d'une protection appropriée »<sup>3</sup>.

8. Prenant en compte les caractéristiques de la présente affaire et le contexte dans lequel elle se déroule, la CIDH estime qu'il a été établi *prima facie* que la vie et l'intégrité personnelle de David Boniface, Nissage Martyr et Juders Ysemé seraient en danger. Les circonstances de cette affaire, dans le cadre de possibles représailles et des faits allégués, indiquent que les membres de leur famille proche sont également en danger.

9. La CIDH estime que la condition d'urgence est remplie dans la mesure où il a été observé un cycle constant de menaces et d'actes de violence présumés sur une courte période, lesquels auraient pris de l'ampleur ces derniers mois suite à l'avancée des procès et à la tenue des prochaines élections municipales. Dans ce sens, les requérants soutiennent que les faits présumés ont été communiqués aux autorités compétentes, ce qui aurait accru la situation de risque, sans qu'il ait été confirmé la mise en œuvre de mesures de protection en faveur des bénéficiaires proposés. Dans ces circonstances, au vu de l'absence supposée de mesures visant à prévenir la répétition des faits relatés et la possibilité que la situation de risque s'aggrave, la CIDH juge nécessaire la mise en œuvre de mesures immédiates de protection en faveur des personnes mentionnées.

10. La Commission estime que la condition d'irréparabilité est remplie dans la mesure où la possible violation du droit à la vie et à l'intégrité personnelle constitue la situation extrême dans ce domaine.

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<sup>1</sup> CIDH, audiences publiques de la Commission interaméricaine sur l'accès à la justice des victimes du régime de Jean-Claude Duvalier en Haïti, 150<sup>e</sup> session ; la sécurité citoyenne et les droits des enfants en Haïti, 149<sup>e</sup> session ; la situation du droit à la sécurité citoyenne en Haïti, 147<sup>e</sup> session ; la situation des droits humains de la femme en Haïti, 147<sup>e</sup> session ; la situation du pouvoir judiciaire en Haïti, 143<sup>e</sup> session. Disponibles à l'adresse <http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=es> (en espagnol et en anglais seulement).

<sup>2</sup> CIDH, « Rapport de suivi sur la situation des droits de la personne en Haïti 2010 », 7 mars 2011. Disponible à l'adresse <http://www.cidh.oas.org/annualrep/2010fr/Chap.V.Haiti.2010fr.htm>.

<sup>3</sup> Ibid, paragraphe 77. Disponible à l'adresse <http://www.cidh.oas.org/annualrep/2010fr/Chap.V.Haiti.2010fr.htm>.



11. En vertu de l'article 25.5 de son Règlement, la CIDH requiert généralement de l'État concerné les informations pertinentes avant d'adopter une décision concernant la demande de mesures conservatoires, sauf dans les affaires telles que la présente, où l'imminence du dommage potentiel ne justifie aucun retard.

12. La Commission rappelle que le travail des défenseurs des droits humains est fondamental pour construire une société démocratique solide et durable et qu'ils jouent un rôle de premier plan dans le processus de pleine réalisation de l'État de droit et de renforcement de la démocratie. Dans ce sens, la Commission interaméricaine n'a cessé de signaler, d'une part, l'importance du travail que réalisent les personnes se consacrant à la promotion, au suivi et à la défense juridique des droits humains, ainsi que les organisations auxquelles bon nombre d'entre elles sont affiliées, et d'autre part, le fait que les fonctionnaires doivent s'abstenir de faire des déclarations stigmatisantes à l'égard des défenseurs ou susceptibles de suggérer que les organisations agissent de manière indue ou illégale, du seul fait qu'elles réalisent leurs tâches de promotion et de défense des droits humains.

#### **IV. BÉNÉFICIAIRES**

13. La CIDH reconnaît David Boniface, Nissage Martyr et Juders Ysemé, ainsi que les membres de leur famille proche, comme les bénéficiaires de la présente demande de mesures conservatoires. À ce sujet, la Commission interaméricaine observe que les requérants n'ont pas identifié de manière précise les membres de la famille proche. Cependant, en vertu de l'article 25.3 du Règlement de la CIDH, ces personnes peuvent être identifiables et déterminables, grâce à leur lien familial étroit avec David Boniface, Nissage Martyr et Juders Ysemé.

#### **V. DÉCISION**

14. Au vu des antécédents signalés, la CIDH estime que la présente affaire réunit *prima facie* les conditions de gravité, d'urgence et d'irréparabilité contenues à l'article 25 de son Règlement. Par conséquent, la Commission demande à l'État haïtien :

- a. D'adopter les mesures nécessaires afin de protéger la vie et l'intégrité personnelle de David Boniface, Nissage Martyr et Juders Ysemé, ainsi que des membres de leur famille proche ;
- b. D'adopter les mesures nécessaires afin que les bénéficiaires puissent exercer leurs activités en tant que défenseurs des droits humains sans faire l'objet d'actes de violence ou de harcèlement ;
- c. De fixer les mesures à adopter avec les bénéficiaires et leurs représentants ;
- d. De faire part des actions adoptées afin d'enquêter sur les faits allégués ayant donné lieu à l'approbation de la présente mesure conservatoire et, ainsi, d'éviter qu'ils ne se reproduisent.

15. La Commission demande également au gouvernement de son Excellence de bien vouloir l'informer dans un délai de 15 jours à compter de la date de la présente communication de l'adoption des mesures conservatoires octroyées et d'actualiser régulièrement les informations à ce sujet. L'octroi des présentes mesures conservatoires ayant été adopté sans avoir demandé au préalable des informations à l'État haïtien, la Commission procédera à la révision de sa décision lors de la prochaine session.

16. La Commission souligne que, conformément à l'article 25(8) de son Règlement, l'octroi des mesures conservatoires et leur adoption par l'État ne préjugent en rien quant à la violation de droits protégés par la Déclaration américaine des droits de l'homme ou d'autres instruments applicables.

17. La Commission demande au Secrétariat de la Commission interaméricaine de notifier la présente résolution à l'État haïtien et aux requérants.

18. La présente résolution a été approuvée le 28 juillet 2015 par : Rose Marie Bele Antoine, Président; James Cavallaro, Première Vice-Présidente; José de Jesus Orozco, Deuxième Vice-Présidente; Felipe González, Tracy Robinson, Rosa María Ortiz, Paulo Vannuchi, membres de la Commission.



Signé par la Secrétaire exécutive adjointe  
Elizabeth Abi-Mershed

Brian Concannon, Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, A View from Haiti*, 32 Colum. Hum. Rts. L. Rev. 201 (2000)

BEYOND COMPLEMENTARITY:  
THE INTERNATIONAL CRIMINAL COURT  
AND NATIONAL PROSECUTIONS,  
A VIEW FROM HAITI

by Brian Concannon, Jr. \*

INTRODUCTION

The Rome Statute of the International Criminal Court (ICC Statute or Statute)<sup>1</sup> is an important victory against impunity for the large-scale human rights violations that occur all too frequently. Yet international prosecutions are only one tool in the struggle for ac-

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1. *Rome Statute of the International Criminal Court*, U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an Int'l Criminal Court, U.N. Doc. A/Conf.183/9 (1998) [hereinafter ICC Statute or Statute].

countability and should be used as a backup to national prosecutions. National prosecutions should remain the primary option, wherever feasible, because they can handle many more cases and are usually preferable from the perspectives of victims and local justice systems. The ICC Statute recognizes the primacy of national courts, since one of its guiding principles is that the International Criminal Court (ICC or Court) shall be complementary to national criminal jurisdictions.

However, complementarity and the Statute's provisions for assistance to local judiciaries are not enough. If the ICC is to have a noticeable impact on the majority of human rights cases, if prosecution of those responsible for large scale human rights abuses is to be the rule rather than the exception,<sup>2</sup> and if this century is not to repeat last century's "millions of . . . victims of unimaginable atrocities,"<sup>3</sup> the ICC will have to do more. It will need to go beyond complementarity and systematically integrate assistance to local judiciaries into its work.

This Article will use Haiti's experience in coming to terms with the human rights violations of its 1991–94 dictatorship as a point of departure for discussing why the Court should support local prosecutions and how it could do so. Haiti provides a good example because although justice for the dictatorship's victims is both a popular and a governmental priority and the government has implemented a host of initiatives to achieve it, the results thus far have been disappointing. Many of the difficulties encountered are the result of trying to achieve justice during a democratic transition. Other problems stem from the government's lack of resources. The ICC is particularly well placed to help countries whose will for justice is frustrated by poverty and the challenges of a democratic transition.

Part I of this Article will discuss Haiti's efforts to provide justice for the coup victims and analyze the obstacles encountered along the way. Part II will focus on the ICC Statute and on ways the Court could maximize its assistance to countries like Haiti. These would in-

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2. See generally M. Cherif Bassiouni, *Searching for Peace and Achieving Justice: The Need for Accountability*, 14 *Nouvelles Études Pénales* 45 (1998); Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 *Yale L.J.* 2537 (1991).

3. ICC Statute, *supra* note 1, preamble. See Jennifer Balint, *An Empirical Study of Conflict, Conflict Victimization, and Legal Redress*, 14 *Nouvelles Études Pénales* 101, 107 (1998).

clude: 1) helping to train prosecutors and judges from countries that need it the most; 2) helping to obtain evidence; 3) helping with arrests; and 4) effectively using the threat of ICC jurisdiction to encourage national trials.

## I. CRIME AND PUNISHMENT: HAITI'S EXPERIENCE

### A. Crimes Against Humanity in Haiti, 1991–1994

The coup d'état of September 30, 1991 ended Haiti's first experiment with a freely elected government. With the support of the country's economic elite, a military junta<sup>4</sup> overthrew and exiled President Jean-Bertrand Aristide, the landslide winner of Haiti's first democratic elections nine months earlier. Hundreds of thousands of pro-democracy protesters took to the streets throughout the country, wielding signs and photographs, clanging pots and pans. Soldiers shot into the crowds, killing hundreds of people in the first days of the coup. The Haitian people continued their nonviolent resistance for three years, and the coup participants continued to repress them. Between 4,000 and 7,000 people were murdered, over 60,000 forced to the high seas as "boat people," 300,000 internally displaced, and countless more were victims of illegal arrests and torture, including beatings and rapes, as well as theft and destruction of property.<sup>5</sup>

The crimes perpetrated against the Haitian population were committed by both regular troops and paramilitary terrorist organizations, often working in concert.<sup>6</sup> Although some terror was random, much was systematic, coordinated at the national level, and precisely

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4. See Notification of Blocked Individuals of Haiti, 58 Fed. Reg. 58480 (Nov. 1, 1993) (listing people determined by the United States Government to have participated in or supported the coup).

5. See generally Si M Pa Rele, Rapport de la Commission Nationale de Verité et de Justice (1997) [hereinafter Truth Commission Report], <http://www.haiti.org/truth/table.htm>. See also Irwin Stotzky, *Silencing the Guns in Haiti* (1997); Commission Justice et Paix du Diocèse des Gonaïves, *La Répression au Quotidien en Haiti 1991–1994* (Gilles Danroc & Daniel Roussière eds., 1995); Human Rights Watch/Americas, *Terror Prevails in Haiti: Human Rights Violations and Failed Diplomacy*, at 5–7 (1994).

6. Truth Commission Report, *supra* note 5, <http://www.haiti.org/truth/chapit7.htm#Top>.

targeted at leaders and participants in Haiti's vigorous grassroots groups and pro-democracy movement. Several prominent Aristide supporters were assassinated, notably businessman Antoine Izmary, Minister of Justice Guy Malary, and Father Jean-Marie Vincent.<sup>7</sup> These crimes would have fallen squarely within the ICC's mandate as crimes against humanity, as they were widespread and systematic, pursuant to a state policy, and knowingly directed against a civilian population. The Court cannot, however, prosecute crimes that occurred before its entry into force.<sup>8</sup>

Much of the repression occurred while the world was watching and recording. Reporters, photographers, and television crews regularly patrolled Haiti's streets for atrocities, and had little difficulty finding them. The Mission Civile Internationale en Haïti (MICIVIH), a human rights observer mission created jointly by the United Nations and the Organization of American States, spent most of the coup years in Haiti or across the border in the Dominican Republic. Human rights and solidarity groups regularly visited Haiti and reported on the repression,<sup>9</sup> and members of Haitian human rights organizations risked their lives to issue regular reports.<sup>10</sup> In fact, the murder of Antoine Izmary took place outside a crowded, public, church service, in full view of MICIVIH observers, members of the diplomatic corps, and the foreign press. Given the high degree of visibility of the acts of violence, there should have been an abundance of evidence available for later prosecutions.

In September 1994, a multinational force with a UN Security Council mandate and led by the United States entered Haiti and forced the coup leaders to relinquish power. In the following months, most of the high military and paramilitary leaders left the country

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7. *Id.*, <http://www.haiti.org/truth/chapit4.htm#Top>.

8. ICC Statute, *supra* note 1, art. 7.

9. Groups that reported on human rights violations in Haiti under the de facto regime included the Inter-American Commission on Human Rights, Human Rights Watch, Amnesty International, National Coalition for Haitian Refugees, Lawyers Committee for Human Rights, the New England Observers' Delegation, the Quixote Center, and Peace Brigades International/Cry for Peace.

10. Notably, the Plateforme des Organisations Haïtiennes des Droits de L'Homme and the Catholic Church's Commission Justice et Paix issued reports.

for Central America<sup>11</sup> or the United States,<sup>12</sup> and the president disbanded the army.

## B. Prosecuting Human Rights Violations

Systematic trial of those responsible for large-scale violations of human rights has never been easy at a time of transition,<sup>13</sup> and Haiti is no exception. The coup victims have incessantly demanded justice, and the government has made repeated, if not always successful, efforts to provide it.<sup>14</sup> Initiatives to advance prosecutions include a national project to collect victim testimonies<sup>15</sup> and a national

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11. Generals Raoul Cédras, the head of the army, and Philippe Biamby, his second-in-command, flew in planes supplied by the United States to Panama. The U.S. rented three of Cédras' houses for Embassy personnel at \$15,000 per month. Lt. Col. Michel François, considered by many the muscle behind the coup, went to the Dominican Republic and subsequently to Honduras, where he survived extradition demands from the U.S. (for cocaine trafficking) and Haiti (for murder). Catherine Orenstein, *Haitian Putschist Hits Florida Jackpot*, NACLA Report on the Americas, Sept.–Oct. 1997, at 1.

12. See Steve Fainaru, *U.S. Is a Haven for Suspected War Criminals*, Boston Globe, May 2, 1999, at A1 (Col. Carl Dorélien, the head of personnel for the army under the coup, reports that 15 high ranking former military personnel, including the entire high command except for Cédras and Biamby, emigrated to the United States); Catherine Orenstein, *supra* note 11, at 1 (Dorelien won \$3.2 million in the July 1997 Florida state lottery). Emmanuel Constant, the acknowledged head of FRAPH, the most prominent paramilitary organization, lives in New York despite a 1995 deportation order from an immigration judge. *In re Emmanuel Constant*, No. A 74 002 009 (Immigration Ct. 1995). Catherine Orenstein, *Haitian Refugee*, The Village Voice, Aug. 12, 1997, at 49 (describing a secret deal between Constant and the U.S. Department of Justice, where Constant refrains from speaking to the press in return for the suspension of his deportation, and the New York City Council calling for his deportation). See also Catherine Orenstein, *The Death Squad Kid*, In These Times, Nov. 29, 1998, at 9; Ron Howell, *Haunted by Haiti Violence*, N.Y. Newsday, Aug. 21, 2000, at A4.

13. See Stanley Cohen, *State Crimes of Previous Regimes: Knowledge, Accountability, and the Policing of the Past*, 20 Law & Soc. Inquiry 7, 20 (1995) (“There has probably been no historical instance where anything remotely like a full policy of criminal accountability has been implemented.”).

14. See generally Mission Civile Internationale en Haïti, OEA/ONU, *Haiti: La Lutte Contre l’Impunité et pour la Réparation en Haïti* (1999).

15. The most prominent of these was the “Bureau des Doléances,” a Presidential initiative of offices in the regional departments with staff to record victim testimony. Each Bureau was to pass its information on to the local prosecutor for use in preparing complaints. Although the Bureau did gather substantial amounts of testimony in some areas, local prosecutors rarely made use of the information. See *id.* at 5–6.



program of legal assistance to victims.<sup>16</sup> The government has established special teams of prosecutors and judges,<sup>17</sup> a Special Investigative Unit of the national police dedicated to human rights cases, and the Bureau des Avocats Internationaux (BAI), a group of lawyers from Haiti and abroad assisting the judiciary with the prosecutions.<sup>18</sup> Related initiatives include programs to “find the truth” about the repression,<sup>19</sup> as well as programs for victim reparation,<sup>20</sup> law reform,<sup>21</sup>

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16. In 1995 and 1996 the government attempted to set up a national network of lawyers to help victims with their cases. This effort failed because it proved difficult to find lawyers who would aggressively pursue the cases. The intransigence of the local judiciaries was also a factor.

17. The first such team, UPENA (“Unité Pénale Nationale”) was composed of selected judges and prosecutors and received specialized training at the Judicial Academy. It never started to actually work on cases, and is now defunct. See Rodolfo Mattarollo, *The Transition to Democracy and Institution Building: The Case of Haiti*, 14 *Nouvelles Études Pénales* 483, 495 (1998). The Ministry of Justice set up less formal but eventually more effective teams for other cases.

18. The BAI has existed since 1995 and targets notorious human rights violations. BAI lawyers work with the victims to prepare complaints and coordinate with prosecutors, judges, police, and national officials to advance the prosecutions.

19. The Commission Nationale de Verité et de Justice (Truth Commission or CNVJ) started work in April, 1995, and presented its report, *Si M Pa Rele* (If I Don’t Cry Out), to the government in February, 1996. See Truth Commission Report, *supra* note 5. Although the report’s information is useful for prosecutors in that it helps locate witnesses and confirm their stories and provides background information for specific cases, the CNVJ’s mandate was expressly not a judicial one. *Id.* The Truth Commission report does play a role in the broader debates about justice, as its recommendations for prosecutions still carry much weight.

20. Soon after its reestablishment, the democratic government provided medical and housing assistance and jobs to human rights victims in a non-systematic way. In 1997, the Ministry of Justice attempted to systematize this work through an office called *Le Bureau Poursuites et Suivi*. See *Le Bureau Poursuites et Suivi & Les Victimes du Coup d’État de 1991–94*, Ministère de la Justice et de la Sécurité Publique, Haiti, *Bilan et Perspectives* (1999). That program proved controversial, and was terminated in April 1999. The Ministry of Justice has met with human rights and victim’s groups in order to plan a replacement, but there is no program yet in place. The government has provided assistance to victims of specific events, especially those of the December 1993 FRAPH arson in Cite Soleil, who received either a new house or compensation in August 1999, and those of the April 1994 Raboteau massacre, who have received some monetary compensation and training.

21. See Commission Préparatoire à la Réforme du Droit et de la Justice du Ministère de la Justice et de la Sécurité Publique, *Document de Politique Générale* (2ème ver., 1998) [hereinafter Report of the Commission for Law Reform].

and commemoration.<sup>22</sup> Haitian non-governmental organizations (NGOs) and foreign organizations have also sponsored initiatives to provide medical treatment for victims,<sup>23</sup> to encourage their psychological rehabilitation,<sup>24</sup> and to advocate for a systematic policy of victim compensation.<sup>25</sup>

Despite the government's efforts, these initiatives have not come close to satisfying the popular thirst for justice. There have been no systematic prosecutions,<sup>26</sup> few major trials, and even fewer long-term jail sentences.<sup>27</sup> Fortunately, however, neither the gov-

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22. Although no substitute for prosecutions, the Haitian government has made a significant effort to publicly acknowledge the sacrifices of the coup victims. The anniversaries of the coup d'état itself, as well as prominent events such as the Raboteau massacre, major assassinations, and the return to democracy, are publicly commemorated. There is a large statue and park near the National Palace for victims, which has become a focal point for victim organizing. There are also statues for female victims and for Antoine and George Izmerly, Guy Malary, Father Jean-Marie Vincent, and the victims of Raboteau.

23. Médecins du Monde, a French NGO, MICIVIH, and Human Rights Fund, a U.S. Agency for International Development (USAID) sponsored project, have all provided medical treatment for victims.

24. MAP VIV (Mouvement d'Appui aux Victimes de Violence), FAVILEK (Famn Viktim Leve Kanpe), SOFA (Solidarite Famn Ayisyen), and many other Haitian groups, as well as Human Rights Fund, Médecins du Monde, and MICIVIH have all had programs in this area. *See generally* Cécile Marotte & Hervé Rakoto Razafimbahiny, *Mémoire Oubliée* (1997).

25. *See, e.g.*, MAP VIV, *Jalons pour une Politique de Réparation* (1998) (copy on file with author); Mission Civile Internationale en Haïti, OEA/ONU, *Haïti: Droits de l'Homme et Réhabilitation des Victimes* (1997).

26. *See* Mission Civile Internationale en Haïti, *supra* note 14, at 18.

27. In 1995, there were two major trials for the murderers of Aristide supporter Antoine Izmerly and pro-democracy activist Jean-Claude Museau. The Izmerly jury found fourteen defendants guilty, including some high level military and paramilitary operatives. However, all but one, a low level paramilitary, were tried in absentia. (The unreported trial court decision is on file with the author.) The Museau court found only one defendant guilty, and he had fled a few weeks before trial. The author followed the Museau case as human rights observer for MICIVIH in 1995. All information regarding the case comes from a review of the case file and conversations with justice officials working on the case. The year 1996 saw the trial for the assassination of Justice Minister Guy Malary in October 1993. The two defendants were acquitted by the jury. *See infra* note 144 and accompanying text. In 1999, former Sergeant Jean-Fritzel Jean-Baptiste was tried, convicted, and sentenced to five years in prison for torture, attempted murder, and kidnapping. Adama Dieng, Independent Expert of the United Nations Commission on Human Rights, *Introductory Remarks on the Human*

ernment nor the victims show any signs of giving up. The victims continue to organize<sup>28</sup> and to expand their capacity to pressure the government. Fondation 30 Septembre, a victims' group, has held a demonstration near the National Palace every Wednesday since its founding in 1997, modeled after the Mothers of the Plaza de Mayo in Argentina. Human rights groups continue to issue reports decrying the lack of progress on cases, and less structured groups communicate their concern in less structured ways, such as through graffiti<sup>29</sup> and denunciations appearing in the press.

The government continues to try new things, to support initiatives that have proven successful, and to push the system to perform better. As a result, there are more promising cases in the pipeline, most notably the Raboteau Massacre<sup>30</sup> and the Cité Soleil arson cases. In the Raboteau case, five years of work by the special police investigative team, local and national judicial officials, the victims,

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Rights Situation in Haiti, Before the United Nations Commission on Human Rights, 56th Session (Apr. 19, 2000).

28. In addition to existing human rights groups and Fondation 30 Septembre, there has been a significant rise in local victims' organizations and women's groups. The grassroots groups are starting to form federations of groups, based on geography (e.g., the Central Plateau) or issues (e.g., female victims of political violence).

29. Popular inscriptions include, usually in Creole, "No reconciliation without justice," "The Criminals must be judged," and "No Democracy Without Justice."

30. The Raboteau Massacre was a military/paramilitary operation in Raboteau, Gonaives in April 1994. The raid took place in the context of a nationwide clamp-down on pro-democracy activities. Gonaives, and particularly Raboteau, has always prided itself on being a center of resistance to tyranny. During the coup, Raboteau lived up to its reputation as its residents continued to organize demonstrations, hide fugitives, and distribute pro-Aristide literature despite frequent retaliation. On April 22, the de facto authorities decided they had had enough, and in a dawn raid soldiers and paramilitaries went from house to house, beating, looting, and sacking. Those who did not flee were often arrested, beaten, or dunked in the area's open sewers. Those who fled were hunted down, and either arrested and tortured or shot. The attackers even commandeered fishing boats to shoot people who fled into the harbor, their traditional refuge.

The Raboteau trial has become the most prominent human rights trial in Haiti and is receiving special government attention. The *Juge d'Instruction* and prosecutors in the case have been given enhanced logistical support, including a special secure office. Two BAI lawyers, including the author, have worked on the case for five years. There are programs to educate victims and witnesses about the legal process and to provide them medical, psychological, and economic assistance. A team from the police's special investigative unit works on the case full-time and a special office coordinates these initiatives.

and the BAI have led to twenty-two suspects in custody and strong evidence of culpability, including corroborated testimony from a large number of victims and witnesses. The prosecution has obtained reports from experts in forensic anthropology, genetics,<sup>31</sup> and military organization,<sup>32</sup> all of whom are expected to testify at the trial. The investigating magistrate issued formal charges in September 1999, which were upheld by the Appeals Court and by the *Cour de Cassation* (Supreme Court) in May 2000.<sup>33</sup> The trial, which began in September 2000, was still underway at this writing.

### C. Obstacles to Results

The uneven success of Haiti's efforts reflects neither a state policy of impunity nor a lack of popular interest, but rather the difficulty of a poor country providing justice in a democratic transition. The obstacles to justice can be grouped into six main categories: 1) the structure and historical role of the justice system; 2) the need to balance competing governmental priorities; 3) resistance to prosecution within the society; 4) difficulties in gathering and preserving evidence; 5) difficulties in arresting suspects; and 6) general feelings of insecurity. Each category includes barriers that are deeply rooted and systemic, as well as those that can be addressed more easily. However, they all coexist and mutually reinforce one another to frustrate even the strongest of commitments to justice.

#### 1. The Justice System

The largest single obstacle to prosecutions in Haiti is the legal system itself. It functions poorly in general, and worse with respect to human rights cases. A long history of undemocratic govern-

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31. A team of forensic anthropologists, invited by the CNVJ and under the auspices of the Argentine Forensic Anthropology Team and the Human Rights Program of the American Association for the Advancement of Science, conducted research on the Raboteau massacre in 1995. More research, including DNA identification, was sponsored by MICIVIH in 1997 and 1998. *See* An Inter-American Team of Forensic Anthropology Consultants, *Forensic Anthropology Investigation: A Report for the Haitian Commission on Truth and Justice* (1995).

32. Two experts from the Centro de Militares para la Democracia Argentina, under the auspices of MICIVIH, investigated and wrote a report on the responsibility of the military hierarchy in the massacre.

33. Unpublished decisions on file with the author. *See also* David Stoelting, *Enforcement of International Criminal Law*, 34 *Int'l Law* 671 (2000).

ment, capped by the thirty-year dictatorship of Francois and Jean-Claude Duvalier (1957–1986) and followed by eight years of turmoil and repression, have left a system unaccustomed to applying the rule of law and unprepared to manage its caseload efficiently. In addition, neither the private bar nor the judiciary is equipped or inclined to help human rights victims seek justice.<sup>34</sup>

The judiciary has suffered from chronic under-investment. Until 1995, there had been no significant investment in infrastructure for years.<sup>35</sup> Judges received salaries that required them to work second jobs or to sell justice to get by.<sup>36</sup> There had been no formal judicial training, no continuing education, and very little evaluation or supervision of judicial officials.<sup>37</sup>

The laws themselves are largely unchanged since the early 19th century,<sup>38</sup> leaving a procedure ill-adapted to an early 21st century caseload.<sup>39</sup> Haiti has not ratified most of the international con-

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34. See Lawyers Committee for Human Rights, Paper Laws, Steel Bayonets: Breakdown of the Rule of Law in Haiti 1 (1990) (The report, written before the 1991 coup d'état, opens with "[t]here is no system of justice in Haiti. Even to speak of a 'Haitian Justice System' dignifies the brutal use of force by officers and soldiers, the chaos of Haitian courtrooms and prisons, and the corruption of judges and prosecutors"); National Coalition of Haitian Refugees, No Greater Priority: Judicial Reform in Haiti (1995); Report of the Commission for Law Reform, *supra* note 21; Stotzky, *supra* note 5, at 81 (Haiti's judicial structure is "less developed than that of virtually any nation that has attempted" a democratic transition).

35. For example, the trial court in Gonaives, Haiti's third largest city, was crammed into the second floor of a ramshackle building with no telephone, electricity, or bathrooms. Missing floorboards afforded a view of the court of appeals hearings on the first floor. This situation has improved since 1995, since the Canadian government built courthouses for each of Haiti's trial courts, and now, thanks to national and international investment, most trial courts have minimally adequate facilities.

There has been a similar improvement in supplies. In 1995, many courthouses had no texts, paper, or pens other than what the judges were willing to supply themselves, which was sometimes nothing. Again, due to both national and international investment, notably by USAID, most courthouses have basic legal texts and office supplies.

36. Even after the raises, trial judges interviewed by the author reported that their salaries are \$600–\$700 per month and that most still teach school.

37. This has improved since 1995 as well. Through national and international efforts, an *Ecole de la Magistrature* [Judicial Academy] has been set up, which provides continuing education to judicial officials and a year-long program for new officials.

38. See Report of the Commission for Law Reform, *supra* note 21, at 2.

39. See *id.* at 18 ("La lenteur de la justice haïtienne est proverbiale.").

ventions that could help with the prosecution of human rights cases.<sup>40</sup> The judiciary has little experience with human rights trials or complex cases, and thus little jurisprudence.

More important than physical, financial, and jurisprudential difficulties, Haiti's legal culture and traditions maintain a system that is slow, formalistic, and geared to serve the interests of economic, military, and political powers.<sup>41</sup> For judges, the incentives to sell justice have always been strong, and the possibilities of achieving real justice slight.<sup>42</sup> The political upheavals of the last ten years have exacerbated this trend by culling out anyone likely to take a principled stand in any direction.<sup>43</sup>

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40. International instruments to which Haiti is a party are integrated into domestic law. Haiti Const. art. 276-2. However, Haiti has not acceded to many important human rights instruments, including: 1) Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 2) Convention on the Punishment and Suppression of the Crime of Apartheid, 3) Convention on the Inapplicability of Statute of Limitations to War Crimes and Crimes Against Humanity, 4) Protocol I to the Geneva Conventions of 1949 Relative to the Protection of Victims of International Armed Conflict, 5) Protocol II to the Geneva Conventions of 1949 Relative to the Protection of Victims of Internal Armed Conflict, 6) Additional Protocol to the American Convention on Human Rights Relative to Economic, Cultural, and Social rights, and 7) Inter-American Convention for the Prevention of Torture. These treaties could help with extradition and transfer of information from other countries. Haiti's adoption of these treaties would also incorporate useful international standards into Haitian law, such as the doctrines of command responsibility, statutes of limitation, and the duty to refuse an illegal order. In Rwanda, for example, the ratification of international instruments has proven to be an important and practical advantage in the prosecutions of human rights violators. Daniel de Beer, Commentary: The Organic Law of 30 August 1996 on the Organization of the Prosecution of Offences Constituting the Crime of Genocide or Crimes Against Humanity 14–15 (1997).

41. See Report of the Commission for Law Reform, *supra* note 21, at 2. See also National Coalition for Haitian Refugees, *supra* note 34, at 1–7.

42. In an interview with the author, one Justice of the Peace, who preferred to remain anonymous, reported that he wanted to follow the letter of the law, but with little police protection and not enough money to rent a secure house, he felt too vulnerable to oppose the powerful. He subsequently traded his robes in Haiti for a house painter's brush in Miami.

43. For instance, a judge with ten years experience at the time current President Préval took office in 1996 would have been appointed under the dictatorship of Jean Claude Duvalier, served two years under the dictatorship of Gen. Henri Namphy, five months under a token democracy, another three months of Namphy, eighteen months under Gen. Prosper Avril, eleven months under an interim president appointed from the Supreme Court, nine months under the elected Aristide administration, three years under a dictatorship, and another fourteen months under Aristide. Surviving

The bar has traditionally collaborated closely with the judiciary in serving the interests of the elite. From training and by disposition, very few lawyers are willing and competent to take cases of human rights victims. Even if lawyers are interested in taking these cases, they rarely have the victims' confidence.<sup>44</sup> High barriers to entry allow the bar to replicate itself and maintain this system despite the arrival of democracy.<sup>45</sup>

Despite the historical trends and current obstacles, there are judges, prosecutors, and lawyers in Haiti who would like to be involved in providing justice for the victims of human rights violations. Their efforts are usually frustrated by an intransigent judicial system, a lack of resources, training, and experience, and a paucity of role models.<sup>46</sup>

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such a diversity of masters requires a much different set of skills than does conducting human rights trials.

44. For example, in 1996 the BAI attempted to recruit lawyers in the city of Gonaïves to help in the case of the 1994 Raboteau massacre. At that time, two years after the return of democracy, no lawyers or organizations had offered legal services to the massacre victims, even though one legal assistance organization with foreign funding supposedly targeted the Raboteau area. Although some local lawyers said they would be willing to work on cases if paid, the victims did not trust any of them, so an out-of-town lawyer was hired.

45. After finishing law school, graduates must present a *mémoire*, or thesis. Technical support, access to materials, and advice for this process are not integrated into the curriculum, so students must find a lawyer willing to help them with their proposed topic, for a price. After successfully defending their *mémoire*, candidates must complete a two-year *stage* or internship. Although some internships may be done in the public sector (in a courthouse, for example), the vast majority of candidates must find a senior lawyer in private practice who is willing to supervise them. As a result, although many students are enrolled in Haiti's six law schools, some motivated by the possibility of using the law for social change, fewer than twenty lawyers per year are admitted to practice, most of whom are motivated primarily by money and power. This estimate is based on the author's discussion with lawyers and law students.

Haiti's legal education system is changing, but haltingly. Citizens Network, a Belgian NGO, installed a pilot legal assistance program in 1996 to help law school graduates with their *mémoire* and *stage* in return for lightly paid legal assistance for the poor. According to personnel at the Citizen's Network, although successful and popular, that program was terminated for lack of funding. A new progressive law school in the town of Jérémie graduated its first class in July 1999. The BAI recently started a program to create a core group of progressive, well-trained lawyers to work on human rights cases as lawyers, prosecutors, and judges.

46. Author's conversations with judges, prosecutors and lawyers, 1995–2000.

Victims are alienated from the judicial system, as its structure is designed to exclude them.<sup>47</sup> Most victims cannot pay the high court costs and lawyers' fees.<sup>48</sup> Most are excluded linguistically, as court proceedings are usually in French, while most victims speak only Haitian Creole.<sup>49</sup> Jury pools are also highly exclusive. Although 60–85% of the population cannot read or write,<sup>50</sup> literacy is a prerequisite for jurors in accordance with the Code d'Instruction Criminelle.<sup>51</sup> In practice, the court officials who create the jury list include from the literate fringe only those traditionally deemed qualified by status: law students or graduates, large landowners, wealthy businessmen, and prominent teachers.<sup>52</sup>

Significantly, unlike many nations in similar circumstances, Haiti is spared two common obstacles: an amnesty law and a statute of limitations that would prohibit prosecutions. Although there was substantial pressure by the United States and the United Nations for a broad amnesty upon the restoration of democracy,<sup>53</sup> the actual amnesty decree is narrow, covering only the coup d'état of September 1991 itself. It does not cover consequent murders, acts of torture, and other crimes.<sup>54</sup> In one of the few legislative accomplishments since

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47. See Report of the Commission for Law Reform, *supra* note 21, at 7–11.

48. *Id.* at 16.

49. *Id.* at 17.

50. Alix Cantave, Haitian Studies Association Report, Political and Economic Reconstruction of Haiti, 1926, *available at* <http://www.cas.umb.edu/hsarpt.html> (last visited Dec. 7, 2000) (quoting World Health Organization statistics on illiteracy of 63% for men, 68% for women and noting that the commonly quoted figure is 85% percent overall).

51. Code d'Instruction Criminelle art. 216 (Haiti).

52. The author has been working on jury selection issues for the BAI since 1996. This work includes advising local and national officials and interviewing victims, potential jurors, and local officials.

53. See Michael Scharf, *Swapping Amnesty for Peace: Was There a Duty To Prosecute International Crimes in Haiti?*, 31 Tex. Int'l L.J. 1, 8 (1996). See also Naomi Roht-Arriaza, *Conclusion: Combating Impunity*, in *Impunity and Human Rights in International Law and Practice* 300 (Naomi Roht-Arriaza ed., 1995).

54. “Sont amnistiés . . . les auteurs et complices du Coup d'état du 30 Septembre, 1991 qui a entraîné le départ forcé pour l'exil du Président de la République . . .” [“Are hereby amnestied . . . the authors and accomplices of the Coup d'état of September 30, 1991, which led to the forced departure for exile of the President of the Republic . . .” (author's translation)]. See *Le Moniteur* (Official Government Newsletter, Port-au-Prince, Haiti), Dec. 1, 1994, at 55. Some have argued that this could be broadly interpreted to include other crimes committed from 1991–94 in support of the coup re-



the return of democracy, in 1998 Parliament removed the statute of limitations for crimes committed during the coup years.<sup>55</sup>

## 2. Prioritization of Justice

The second category of obstacles in Haiti is political, and includes the question of where the fight against impunity fits among the government's legitimate, often urgent priorities. Haiti is the poorest country in the hemisphere, and among the world's poorest.<sup>56</sup> The education system, after years of upheaval and neglect, is one of the world's worst,<sup>57</sup> and health care is inaccessible to most of the population.<sup>58</sup> Law enforcement had been the bailiwick of the army, which was abolished in 1995, and a new police force had to be built from scratch, with few experienced officers.<sup>59</sup> As usually happens when a democratic regime replaces a repressive one, common crime has increased.<sup>60</sup> With the exception of the 1990, 1995, and 2000 elections, the majority of the population has never effectively participated in electing representatives. Those likely to be elected have lit-

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gime's consolidation. *See, e.g.*, Scharf, *supra* note 53, at 17. This interpretation is inconsistent with President Aristide's actual practice of pursuing cases against the coup criminals, as well as with the language of the decree itself. Furthermore, Aristide showed that he could make a broader decree when he did so under pressure in 1993. That decree was subsequently revoked. The amnesty law has never been successfully invoked in trials for coup era human rights violations. The defense lawyers in the Raboteau case, some of the most experienced in the country, did not even raise the issue of amnesty in their appeals of the charges. The BAI represented the victims on appeal. The author reviewed all submissions in the case and observed the hearings.

55. La Loi sur la Réforme Judiciaire du 8 Mai, 1998 art. 7 (published in *Le Mouniteur* (Official Government Newsletter, Port-au-Prince, Haiti), Aug. 17, 1998).

56. Haiti's annual per capita Gross Domestic Product (GDP) is usually calculated at below U.S. \$300. Kevin Watkins, Oxfam International, *Education Now: Break the Cycle of Poverty* 116 (1999), available at <http://www.oxfam.org.au/oxfam/advocacy/education/report/index.html>.

57. According to Oxfam, only Bhutan, Niger, and Ethiopia have worse educational performance. *Id.*

58. Health care for the poor has improved dramatically in the last year, with the arrival of 800 health professionals from Cuba, who offer low cost care in underserved areas. Chris Chapman, *Cuba to Send More Doctors to Haiti Under Aid Pact*, Reuters Newswire, Jan. 19, 2000.

59. *See* Amnesty International, *Haiti: Still Crying Out for Justice* (1998).

60. *See* Wallace Scott, *You Must Go Home Again*, *Harper's Mag.*, Aug. 2000, at 47, 48 (reporting that crime increased in El Salvador following transition); *Fear Felt in Haiti Ahead of Vote*, Associated Press, May 5, 2000.

tle experience governing, because officials who served under the various dictatorships are unlikely to be elected. Since politics has historically been based on acquiring power through means other than pleasing the majority of citizens, there is little tradition of political parties with coherent policy positions.<sup>61</sup>

Although the Haitian government has made justice for coup victims a priority, the need to balance other competing priorities manifests itself in: a) a shortage of resources for justice efforts in general,<sup>62</sup> and for human rights cases in particular; b) the uneven success of programs for human rights prosecutions;<sup>63</sup> c) the slow pace of judicial reform; d) the inability to recruit adequate judges and prosecutors; and e) the inability to get the judiciary to effectively process even simple human rights cases.

The privileging of other important priorities at the expense of human rights trials is frustrating from the perspective of those primarily concerned with justice for the coup victims. However, it does not necessarily indicate a lack of will of the government to prosecute those responsible. An analysis of the impunity problem that ignores the complexity of a poor country's needs and simply classifies the government as one not interested in justice is unlikely to yield results. A more fruitful approach would include concrete strategies to raise justice in the pecking order, through well targeted national and international pressure, and assistance aimed at helping the state overcome some of its real difficulties, both within and without the justice system.

Certain priorities, such as economic and infrastructure development, compete with justice by requiring scarce resources and the energy and time of government officials. Others conflict or are perceived to conflict more directly. Human rights trials, especially in the

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61. This situation has been improving. For the 2000 legislative elections, one party, Fanmi Lavalas, issued a 182-page program document. See Jean-Bertrand Aristide, *Investir dans l'Humain: Livre Blanc de Fanmi Lavalas* (1999).

62. For example, a rookie police officer earns about as much as a chief prosecutor or trial court judge and much more than a Justice of the Peace. Author's conversations with police officers, prosecutors, and judges, 1996–2000.

63. Several initiatives have fallen short because of lack of funding, and many judges and prosecutors claim that they would do more if they were better equipped and protected. In some cases, like the Raboteau and Jean Dominique case, however, the government has provided generous assistance to judges and prosecutors, including a special workroom, transportation, and security.

short term, can put stress on the overall security situation. These trials are sometimes seen as endangering efforts to consolidate democracy, create a stable climate for investment, and develop a police force.<sup>64</sup> Even within the justice system itself, there are tensions between making systemic changes and handling a few potentially incendiary cases, and dealing with current crime or dealing with past crimes. Further tension exists between the need for judges, prosecutors, and police who are not performing well to spend time in training rather than working on the impunity cases.

It is often said that a transitional state's best chance of coming to terms with its past is during the "honeymoon" of the first year of democracy. During the period, before the opposition becomes organized, and while the new government's support is at its highest, the state can devote itself to justice before it loses some of its support, and more importantly, becomes bogged down with other priorities.<sup>65</sup> Haiti, however, enjoyed no such luxury. Within the first fourteen months of restored democracy, the country ran four separate national elections for almost every elective office including President, dismantled the army, and recruited, trained, and installed new forces of police and prison guards.<sup>66</sup>

### 3. Resistance to Prosecution Within Society

In countries transitioning from dictatorship to democracy, the amount of power retained by the former oppressors or their political and financial allies varies. In Rwanda, for example, the transition was so abrupt that there is little vestige of the former rulers. In Chile, on the other hand, the power structures remained largely intact after the arrival of formal democracy. To the extent that the old guard retains power, the transitional government is forced to compromise with it, and to expend energy overcoming internal resistance to any reform, including justice for human rights victims.

Haiti faces less resistance to prosecutions than many other transitional societies because it abolished the army, and, at least

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64. In the long term, however, these political and economic goals cannot be achieved without progress in the judicial arena.

65. Roht-Arriaza, *supra* note 53, at 282.

66. The author observed the four elections as part of the Organization of American States' electoral mission. He worked with the new prison guards and police with MICIVIH in 1995 and 1996 and with the BAI from 1996–2000.

numerically, the coup supporters were very small while the coup victims were very large. Yet in the transition to democracy, the financial elite who backed the coup retained their old power. The military and paramilitary groups are at least perceived to have some capability,<sup>67</sup> and the civil service is still full of those hired under one dictatorship or another. In Haiti's tightly knit society, most people, even most victims, have some relationship with someone accused of human rights violations. Therefore, although there is no public resistance or opposition to the prosecution of human rights cases, the prosecutions must overcome significant resistance within Haitian society.

Some of this covert resistance comes from former army members. The army, although disbanded, has not disappeared. Former members continue to organize politically,<sup>68</sup> and most of the former high command still meet in Florida, where they live in exile.<sup>69</sup> Despite requests from the Haitian government, the multinational force never attempted systematic disarmament of military or paramilitary personnel.<sup>70</sup> It is widely believed that former soldiers and paramilitaries still possess their guns.<sup>71</sup> In addition, former members of the military recycled into the new civilian police force make up about a third of the force, and almost all of its leadership, especially the police *commissaires*.<sup>72</sup> The military in Haiti generated substantial insti-

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67. 18 Haiti Progress 31 (2000) (repeating Haitian National Television report that former members of the military now in the police force were preparing prominent assassinations and a coup d'état).

68. For example, former soldiers periodically demonstrate in Port-au-Prince over their pension funds. Also, several right-wing candidates for Haiti's 2000 legislative elections have advocated a revival of the army.

69. Fainaru, *supra* note 12.

70. See Stotzky, *supra* note 5, at 160, 172–73 (reporting that some Special Forces units actually helped the army and paramilitary groups hide weapons). See also Amnesty International, *supra* note 59. In 1995, United States Special Forces members in Haiti told the author that they knew where the guns were hidden and who had them, but were under orders to not conduct disarmament operations. See *id.* (quoting reports that the disarmament of Haiti has not been successful).

71. Stotzky, *supra* note 5, at 44.

72. At least six former military members of the police have been arrested for human rights violations committed during the coup. Three former soldiers in the police, including a *commissaire*, were convicted for their participation in the May 1999 Carrefour Feuille police massacre. The author observed the Carrefour Feuille trial in August 2000. Three more soldiers have been arrested and charged in the Raboteau trial.

tutional loyalty, so even former soldiers who were appalled by the carnage of the coup are still reluctant or afraid to help the prosecutions of their former colleagues. None of the former soldiers now serving in the police force (which is under the Ministry of Justice) have provided information to help the prosecutions.

The economic elite that financed and supported the coup are still in business, many of them enriched from importing products through the embargo.<sup>73</sup> They employ many people, have significant influence on the government, and retain groups of armed men, mostly former soldiers, as security guards. Although it would be hard to spot the hand of the elite in any particular case, there is at least a general assumption among those working for human rights prosecutions that these elite have been using their influence against the prosecutions.

Prosecutions must also combat the unorganized, but still formidable, resistance based on family or friendship ties that can trump political convictions or professional responsibilities. Although the organizers of the repression were not in contact with the victims, those who executed the policy were recruited from the same poor neighborhoods. Therefore, it is inevitable that many of the victims and attackers had relationships and communications with each other, and often the ones responsible for carrying out the repression would try to spare their friends or relatives. Sometimes even the most malicious person was willing to save potential victims from harm by an advance warning or a word to his accomplices. Many accounts of coup atrocities also mention a soldier or paramilitary saving potential victims from his own collaborators.<sup>74</sup> This assistance goes both ways, as now every accused has some relation with the victims, or if not, with a judge, a police officer, or a court worker.

The resistance to prosecutions within Haitian society is buttressed by the equivocal attitude of the international community to-

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73. Catherine Orenstein, *Second Hand Democracy*, 13 Tikkun 44, 45 (1998). The current head of the Chamber of Commerce is widely accused of having organized the massacre of peasants occupying land he claimed as his own in the village of Piatre. When a team of judges began investigating the case, the chamber head left the country. The BAI has worked with the Piatre victims.

74. In the Raboteau case, for example, the activists for whom the military claimed to be looking had left town the night before, tipped off by one of the massacre's most zealous participants. Also in the Raboteau case, victims have asked the judge to release a defendant arrested on the complaint of other victims.

ward prosecuting human rights cases. Although most foreign governments are on the record as favoring justice for Haiti's victims, their actions are often to the contrary. The U.S., for example, despite spending tens of millions of dollars on justice and law enforcement support since the return of democracy, has hindered the prosecutions in many ways, including pressuring the Haitian government to give amnesty to the coup criminals,<sup>75</sup> flying the top leaders out of Haiti,<sup>76</sup> letting many others stay in the United States,<sup>77</sup> and refusing to hand over evidence of atrocities that belongs to Haiti.<sup>78</sup> Among the myriad foreign assistance programs in justice and law enforcement, not one provides legal representation to coup victims. MICIVIH alone specifically supported the prosecution of human rights cases.<sup>79</sup>

#### 4. Collection, Preservation, and Analysis of Evidence

Another obstacle to prosecuting human rights cases in Haiti is finding evidence. Human rights cases are often difficult to prove, and this is especially true with Haiti's cases. The prosecutions depend heavily on victim testimony because the dictatorship prevented the collection and preservation of other evidence. Although finding victims is easy, they are often unable to identify their attackers<sup>80</sup> or

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75. Scharf, *supra* note 53, at 8.

76. Orenstein, *supra* note 11, at 1.

77. Fainaru, *supra* note 12, at A1.

78. *Id.* After hearing a news report about the United States declining to execute the deportation order of paramilitary chief Emmanuel Constant, one of the most persistent victims approached the author, visibly deflated and said that "they" (the victims) just could not do it: they were used to fighting the army, the paramilitaries and the judicial system, and could persevere there, but they could not beat the United States.

79. MICIVIH provided training for UPENA, an initiative to create a team of judges and prosecutors to work on human rights cases; provided informal assistance to judges and prosecutors actually working on cases; and sponsored experts in forensic anthropology and military organization in the Raboteau case. Until its departure in March 2000, the mission was unequivocal on the need to prosecute the coup criminals and the need for the international community to increase its contribution to this effort. Many victims, however, criticized the mission for not being more directly involved in the cases, and for not providing all of its documentation to the prosecution. In addition, MICIVIH did not collect its information during the dictatorship in a form that would be useful for prosecutions. The United Nations Development Program (UNDP) helped with the Raboteau trial by financing the international experts who will testify.

80. In general, repression in Port-au-Prince was anonymous. Victims can say little more about their attackers than what they were wearing. Outside of the capital,

are reluctant to testify. When the accused can be identified, corroborating the victim's testimony is often difficult because the attack took place in a military installation or during the panic of a large-scale operation. Potential corroborating witnesses are often not found because they were internally displaced or otherwise transient, and have since migrated or returned to their homes. Although scores of journalists and human rights workers interviewed victims during the coup, they did not take the testimony in a form useful for prosecutions. Often the interviews do not adequately identify the informant, or do not have sufficient details.<sup>81</sup> As most victims are poor and illiterate and come from an oral and informal culture, their stories do not always fit neatly into the logical boxes a prosecutor would like to see in court. These problems of eyewitness testimony become magnified in Haiti, as elsewhere, as time passes, memory fades, and witnesses move or die.

Physical evidence to corroborate the eyewitness reports is rare. Contemporary crime scene and ballistics investigation did not take place because the ones charged with investigating were themselves the perpetrators.<sup>82</sup> Few people had cameras to document deaths, injuries, and property damage. Retaining photographs and other evidence, such as a bloody shirt or broken furniture, was not done because doing so would invite further attacks.

Medical evidence, often the best corroborative evidence available, is severely limited. Under the dictatorship, as now, most Haitians could not afford the formal health care system and either went without treatment or consulted traditional healers who do not keep records. Even those victims who could access the health care system often refused to do so out of fear of further injury.<sup>83</sup> When victims went back to the hospital, the medical records were often destroyed.<sup>84</sup>

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however, it was more personalized, with some soldiers desiring that the victims specifically fear them. As a result, it is most difficult to build cases in the worst atrocities, the mass shootings in urban areas.

81. The author prepared several human rights cases for trial from 1996–2000.

82. The most notorious unit of the Haitian military was the police department's investigative unit, called "Anti-Gang."

83. For example, one of the victims of the Raboteau massacre left the hospital in Gonaives after soldiers came in looking for her and was forced to do the same a week later in the capital.

84. The state hospital in Gonaives, which is the only hospital in the area, has no record of admissions for the victims of the Raboteau massacre.

Despite the limitations, however, there is some medical evidence. Some victims have scars or continuing medical problems that can help substantiate their claims. Others were treated by doctors, often financed by foreign organizations, who kept records.<sup>85</sup>

Prosecutors have had particular difficulty in demonstrating evidence of command responsibility. As a result, most of the arrestees so far have been those who were on the scene executing the orders, rather than those who gave them. Moreover, no former soldiers have been willing to testify about the command structure, either out of solidarity with their former colleagues or a fear of reprisals.<sup>86</sup>

The best evidence that could implicate the high command and the paramilitary leadership, as was shown by the Nuremberg trials, is its own documents. Although the Haitian military did not match the Nazis in record keeping, it did keep routine records of intelligence reports, correspondence, troop movements and operations, and financial transactions.<sup>87</sup>

The military and paramilitary organizations also kept more sadistic documentation, including video and audio cassettes, and “trophy photos” of torture sessions, which reportedly include the torturers posing with their victims. This information would greatly facilitate prosecutions, but approximately 160,000 pages of the best documentation were taken from military and paramilitary facilities by U.S. troops.<sup>88</sup> These materials have not been returned despite re-

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85. Medecines du Monde treated victims during the coup. USAID, through its Human Rights Fund, paid local doctors to treat victims.

86. In the Raboteau case, however, prosecutors have been able to establish a strong command responsibility case. The High Command issued a press notice a few days after the massacre, acknowledging that it was an army operation, but contending that the action was a reprisal against terrorists. Several witnesses have testified that the massacre was planned in advance and involved transfers of troops from other districts. There is also much circumstantial evidence, especially the timing of the attack relative to other regional, national, and international events. Finally, a team of military experts from the Centro de Militares para la Democracia in Argentina conducted documentary research and interviews in Haiti, and provided a report detailing the responsibility of the military commanders. Spanish and French versions of the report on file with author.

87. The army’s record keeping is analyzed in the report of the Argentine military experts for the Raboteau case, on file with the author.

88. David Gonzalez, *So That Tyrants Won’t Rest, Haitians Keep a Vigil*, N.Y. Times, Aug. 2, 2000, at A4; Howell, *supra* note 12 (explaining that “[t]he desire to root



quests from the Haitian government,<sup>89</sup> sixty-nine members of the U.S. House of Representatives,<sup>90</sup> and a host of individuals and organizations from the United States and abroad.<sup>91</sup> The inability of Haitian prosecutors to access this evidence is a serious impediment to their work, and is one that the ICC could help remove.<sup>92</sup>

## 5. Arrests

Arrests in Haiti are rendered difficult by the ability of suspects to take refuge both within and outside the country. This difficulty is compounded by other obstacles such as inadequate resources, the limited experience of the police, resistance to arrests by former military members, and the poor organization of the Haitian bureaucracy.

Many of the accused have fled Haiti, across the border to the Dominican Republic or to the United States.<sup>93</sup> For those without the means to leave the country, there are ample hiding places in rural areas within Haiti, as there is little police presence outside of towns. Although police units are trying to track down suspects, they are inexperienced and inadequately equipped.<sup>94</sup> They do not receive adequate assistance from other units because of poor communication and organization. Furthermore, there is a lack of cooperation from local

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out the crimes of the coup has . . . propelled a campaign for the United States to return documents it seized from the paramilitary group and the Haitian military”).

89. Dieng, *supra* note 27.

90. Letters from members of the U.S. House of Representatives, to President William Clinton (Dec. 1, 1995 & Jan. 30, 1996).

91. Dieng, *supra* note 27.

92. A group of Haitian grassroots organizations has mounted an international campaign to demand their return. For more information, e-mail avokahaiti@aol.com.

93. See Fainaru, *supra* note 12 (describing how suspected war criminals from Haiti, among other countries, have settled in the United States).

94. In one 1997 arrest, a member of the police team on the Raboteau case burst into the BAI office, asking for the office's car keys, explaining that a suspect was nearby on Avenue John Brown. The suspect suffered more than most from the Port-au-Prince traffic as the police caught up with him in their borrowed car. He was a former soldier and believed to be armed and dangerous, so the team toted a shotgun along with their service revolvers. He did not resist, which was fortunate since there was no ammunition in the shotgun. That arrest marked number twenty-one, which was at the time one more than the total incarcerated for the Yugoslav War Crimes Tribunal.

commanders, many of whom are themselves former members of the military.<sup>95</sup>

Techniques for locating people that work in more developed countries have borne little fruit in Haiti. Databases such as automobile and tax records are not easy to access because of poor organization and actual resistance by staff. Moreover, even once accessed, documents are not reliable, as aliases are easily and frequently used.<sup>96</sup> Many suspects can be identified only by their nicknames, which are even more easily changed. As a result, although victims can often name their attackers, the police do not often succeed in locating and arresting them.

## 6. General Insecurity

Countries making the transition from authoritarianism to democracy often experience a rise in common crime along with the decrease in political repression.<sup>97</sup> With an inexperienced police force, inefficient and corrupt judiciary, guns in the hands of unemployed former military or paramilitary, and a drug trade well established by the coup regime, Haiti is no exception.<sup>98</sup> Arrest rates for serious crimes are low, and quick releases for the most violent arrestees are high.<sup>99</sup> Although criminals often escape or are liberated illegally, coup-era human rights cases are the exception. In all of the BAI's cases, for example, there has been only one escape and no liberations

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95. See Mission Civile Internationale en Haïti, *supra* note 14, at 32–34.

96. Using a false name was common practice in the army during the dictatorship. Truth Commission Report, *supra* note 5, at <http://www.haiti.org/truth/chapit7.htm#Top>.

97. For example, Russia, El Salvador, and South Africa experienced increased crime levels. See Scott, *supra* note 60.

98. Michel François, one of the coup leaders, was indicted by a Florida grand jury for drug smuggling, but Honduras refused the extradition request. See *Honduran Judge Refuses to Extradite Haitian Ex-Official to U.S.*, N.Y. Times Apr. 17, 1997, at A4. Lt. Marc Valmé, a François associate, was sentenced to life imprisonment in the same case. Patricia Zengerle, *Haiti-U.S. Drug Trio Sentenced to Life*, Reuters (Miami), Feb. 12, 1999; Tim Weiner, *CIA Formed Haitian Unit Later Tied to Narcotics Trade*, N.Y. Times, Nov. 14, 1993, at A1; Stotzky, *supra* note 5 at 175–76.

99. Amnesty International, *Haiti un Travail Inachevé* 11 (2000).

of arrestees against whom the evidence was strong.<sup>100</sup> In the case of the one escapee, prison authorities fired responsible guards and the departmental prison coordinator, and reinforced the prison structure. The uncertainty caused by the increase of crime and the perception that the state cannot do anything about it makes everyone less willing to participate in the criminal justice system. This is especially true in human rights cases, as it is generally feared that the former military and paramilitary ardently embraced organized crime after the restoration of democracy.<sup>101</sup> In the Raboteau case, for example, several defendants who are at large are reported to be gang members.<sup>102</sup> Others have been “caught” for the purposes of the case when they were discovered already incarcerated for other recent crimes.

To date, there have been no confirmed reports of attacks against witnesses or officials for participating in a human rights case, but the fear of such attacks is widespread and has a large impact on the prosecutions. Victims and witnesses fear retaliation, judges and prosecutors claim that they cannot advance the cases without more protection, and police complain that their arrestees are soon back on the streets, with a grudge.<sup>103</sup> This insecurity has also been cited as a factor in low turnout for jury duty, as has been reported to the author by several judicial officials, especially regarding prospective women jurors.

Haiti’s efforts to provide justice to its human rights victims certainly illustrates the difficulties of such an endeavor. But they also show that the difficulties are not insurmountable, and that a poor country, even without much outside help, can make progress if it keeps trying. Both these successes and failures provide a good background for examining why the ICC should help countries like Haiti, and analyzing how it could do so.

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100. This is mostly because of the high profile of the cases, the fear of victim reaction to an improper release, and close coordination among police, judicial, and penal authorities.

101. See Amnesty International, *supra* note 59, at 3.

102. Author’s interviews with police investigators, lawyers on the case, and victims.

103. The fear of release has had one salutary effect on the police working on BAI cases: they now look more closely at the evidence before making an arrest, and often coordinate with the judge issuing the warrant to confirm that the case is strong.

## II. THE IMPACT OF THE ICC ON NATIONAL PROSECUTIONS

No matter how well the ICC performs its tasks, national prosecutions will always be essential to the fight against impunity. The ICC Statute's complementarity provisions recognize the importance of national trials, in both its complementarity rule and its provisions allowing the court to help local judiciaries.<sup>104</sup> Yet because of its unique international profile and mandate, the Court can and should go farther. It should actively assist local judiciaries trying to prosecute human rights cases, and this assistance should be systematic and central to the Court's work. This section will discuss why national prosecutions are essential, and analyze ways the ICC can maximize its support for these efforts.

### A. The Importance of National Prosecutions

National prosecutions are important to international prosecutions because international courts can only prosecute a small fraction of the large-scale human rights violations that occur. They are also important from the perspective of the prosecuting country because victims generally prefer a good local prosecution to a good international one.<sup>105</sup> National prosecutions are a valuable opportunity both to force the local justice system to perform better and to build public confidence in that system.

The ICC's ability to take cases is limited by its own mandate, by the limits of its resources, and by political constraints on its jurisdiction. As a result, the Court will likely take only the most serious cases with significant symbolic value and those that generate sufficient political consensus. The Court's mandate limits it to "the most serious crimes of concern to the international community as a whole."<sup>106</sup> This means that, quantitatively<sup>107</sup> and qualitatively, the

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104. "[E]ffective prosecution [of serious crimes] must be ensured by taking measures at the national level..." and the ICC "shall be complementary to national criminal jurisdictions." See ICC Statute, *supra* note 1, preamble.

105. See *infra* note 114 and accompanying text.

106. ICC Statute, *supra* note 1, art. 1.

107. For example, the International Criminal Tribunal for Rwanda (ICTR) reached its sixth conviction in December, 1999, Press Release, ICTR, ICTR/INF09-2-216en-Arusha (Dec. 6, 1999), while the Rwandan courts had tried over 1,400 by then. De Beer, *supra* note 40, at 7. See also Stoetling, *supra* note 33, at 671 (stating that

ICC will be reserved for high-level leaders or notorious episodes.<sup>108</sup> Most violations will not justify engaging the ICC process, and even where the ICC conducts an investigation into an episode, it will be unable to pursue most of the potential defendants. The ICC will be useful in prominent cases because it will have a high political profile, large logistical capability, well-paid international staff, and the capacity for complex litigation. These factors also make it too cumbersome and expensive for the ICC to pursue minor incidents or low-level soldiers or paramilitaries.<sup>109</sup>

The ICC will not be able to reach some cases for political reasons, because of the possibility of a negotiated settlement,<sup>110</sup> or because either the host state or an influential state party opposes it.<sup>111</sup> The ICC Statute allows for delays in or removal of jurisdiction where the territorial state is prosecuting or has prosecuted,<sup>112</sup> or at the behest of the Security Council.<sup>113</sup> Although the jurisdictional limits can be used positively to encourage national prosecutions or resolve an ongoing conflict, both types of limits can also be abused to frustrate

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Rwandan courts have handled a far greater number of prosecutions than the better known international criminal tribunal).

108. See generally M. Cherif Bassiouni, *Policy Perspectives Favoring the Establishment of the International Criminal Court*, 52 J. Int'l Aff. 795 (1999).

109. Michael P. Scharf, *Balkan Justice* 224 (1997) (the trial of Dusko Tadic by the International Criminal Tribunal for the Former Yugoslavia (ICTY) cost the Tribunal some twenty million dollars).

110. *Id.* at 44 (opposition by British negotiator Lord Owen to pursuing Serb leaders during negotiations); Christopher Black & Edward S. Herman, *An Unindicted War Criminal*, *Z Mag.*, Feb. 2000, at 25–26 (indictment of Slobodan Milosevic did not come until after negotiations had fallen apart and NATO started bombing).

111. See *infra* notes 150–61 and accompanying text. In the ICTY context, several countries, notably Russia, oppose the trial of high level Serb leaders. Augusto Pinochet would have presented an intriguing challenge to ICC jurisdiction, given the differences, even among NATO countries, about the wisdom of trying him outside of Chile. Although in many cases the political opposition to ICC jurisdiction would also preclude national jurisdiction, in some cases the host country is attempting to prosecute, against the resistance of other states. See Press Release, Human Rights Watch, *More 'Pinochet Style' Prosecutions Urged* (Mar. 3, 2000) (citing mass murderers currently being sheltered in third countries, including Ethiopia's Mengistu Haile Mariam in Zimbabwe and South Africa, Uganda's Idi Amin and Milton Obote in Saudi Arabia and Zambia, respectively, and Paraguay's Alfredo Stroessner in Brazil). See also *supra* note 11 and accompanying text.

112. ICC Statute, *supra* note 1, art. 15.

113. *Id.* art. 16.

an important ICC prosecution. The Court is likely to refrain from acting in many cases because of the difficulties in making arrests or building adequate cases.

If local conditions permit a high-quality prosecution, national prosecutions are preferable from the standpoint of victims and local justice systems.<sup>114</sup> A good local prosecution would have most of the advantages of a good ICC trial while at the same time generating national support for the justice system. It would also encourage the local judiciary to raise its standards of performance and be more responsive to the concerns of those traditionally excluded from the system. These benefits will not only advance the ICC's objectives with respect to major human rights violations, they will also directly advance the related causes of human rights, administration of justice, and democracy reinforcement.

Furthermore, victims generally prefer a local prosecution to an international one.<sup>115</sup> Although victims in Haiti are understandably skeptical about whether their system can provide an acceptable trial, they are also wary of a trial held outside the country, where the rules may be different. In a local trial, the victims would better understand the proceedings, and could exercise some leverage over the government and the judiciary. They could hear the verdict with their own ears, and be more certain that those convicted were incarcerated.<sup>116</sup>

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114. However, with respect to victim reparation, a process in the ICC could be preferable to the domestic forum. For example, article 75 of the ICC Statute permits the Court to enter a judgement against an individual defendant, which then is enforceable in the jurisdiction of any state party. Furthermore, the Court can provide an award from a trust fund for the victim in certain cases. This is an advantage in a state where there are few resources for compensating victims, or where a victim would have difficulty enforcing a local judgement against a defendant residing abroad. This procedure is not automatic upon the request of a victim; it requires a prosecutor or judge to initiate it. It could also never reach the majority of victims of a series of large scale human rights violations.

115. If asked simply whether they would prefer a national prosecution to an international one, some victims say they prefer the international because they assume it would be better quality and that the international tribunal would be able to adjudicate all of the accused and obtain all of the evidence. When it is explained that international tribunals often experience some of the same problems as local courts, all victims I spoke with said they would prefer a local trial, if the quality were comparable to the international one.

116. Thérèse, a resident of Cité Soleil, is a victim of several Haitian dictatorships as well as an ardent pro-democracy activist. She reported that she believes in Jesus

Victims are also wary of an international tribunal applying different rules.<sup>117</sup> For example, in Haiti there is an automatic jury for the most serious felonies, including murder, which ensures that the fact finders represent the victims to some extent, and understand the context of the crimes. Victims would not like to turn this job over to less accountable foreign judges. Victims are also concerned about the punishment given in an international trial. They fear that incarceration in the industrialized world may be better than freedom in their neighborhoods.<sup>118</sup> Although it is not so with Haiti (which has abolished the death penalty), some victims criticize the International Tribunal's inability to impose execution.<sup>119</sup>

Psychological benefits to the victims would be greater with a successful national trial. Victims of massive human rights violations are usually the least powerful in their own countries, and their countries are themselves often among the least powerful globally. Their victimization is only part of a larger context of disempowerment. As a result, any remedy to the victim's problems must, as much as possible, empower them by involving them in all aspects. This includes decisions such as choosing whom to arrest and prosecute, what information to use, and trial strategy. Involving the victims would be much easier to do with a national prosecution: more victims could testify and therefore have the opportunity to tell their stories in public. More people could see the trial, either in person or on live televi-

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without seeing, *see* John 20:29, but would not do the same for the ICC, or any other work of man. The distrust of prosecutions outside the country would be stronger among people with historical reasons to distrust foreign involvement in their affairs.

117. *See* Stefaan Vandeginste, *The International Criminal Tribunal for Rwanda: Justice and Reconciliation*, 11 Relief & Rehabilitation Network Newsletter 4, 5 (1998) (the modern "vengeful" justice represented by the ICTR contrasts with the traditional role of justice in Rwanda, reestablishing social order and repairing interpersonal relations), available at <http://www.odihpn.org.uk/newslet/acrobat/n11e.pdf>.

118. ICC sentences are served in a state designated by the Court, from a list of volunteers. ICC Statute, *supra* note 1, art. 103(1)(a). As there is no provision for ICC subsidy of the incarceration, volunteers are most likely to be wealthy countries. Prison conditions for ICC prisoners are to conform to international treaty standards and to be the same as for other prisoners convicted of similar crimes in the enforcing state. *Id.* art. 106.

The author has had conversations with several of the victim plaintiffs in the Raboteau and Cite Soleil cases (1999) who have expressed disappointment that the defendants would be incarcerated in foreign countries.

119. Le Génocide et les Massacres au Rwanda en 1994, *La Justice en Question* (report on file with the author).

sion, and it would be in a more familiar format. Most importantly, a successful national trial would be evidence of a structural change in the society, usually the type of change that the repression was implemented to stop in the first place. In many countries the formerly oppressed would be punishing their former oppressors for the first time, through the medium of a justice system that was traditionally itself an instrument of oppression.

National prosecutions also afford the local judiciary opportunities to improve its performance and, if it is successful, to build public confidence in the system. The Raboteau case in Haiti, for example, acts as both a carrot and a stick: the case's notoriety allows the judiciary to obtain resources and assistance that it cannot attract to other cases, and the spotlight forces those involved to perform at a much higher level. The resulting product of the system has, so far, been superior to that from cases in the past,<sup>120</sup> and will set a higher standard for performance. The progress to date has increased faith in the justice system in those close to the case, especially the victims. If the trial is ultimately successful, confidence will rise nationwide, as will expectations for the judiciary to build on its success.

The ICC has enormous potential to help these essential national prosecutions. As discussed below, the Statute allows the Court to help in many ways, but does not require it to do so. Absent a conscious effort to integrate assistance to local judiciaries into the ICC's programs, this potential could be lost in the day-to-day press of work on high profile cases. The fact that assistance to national prosecutions has not played a large role in the debates surrounding the Court thus far implies that such assistance is not a high priority. Accordingly, the Court should, in its planning and operational stages, systematically institutionalize assistance to local judiciaries into its programs. By going beyond passive complementarity, the Court could leverage its efforts, thereby multiplying its own effect on providing justice for the victims of human rights violations.

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120. The complaints, pleadings and other documents filed by the victims' lawyers are well above the norm and have been copied by lawyers in other cases. The *Ordonnance de Renvoi*, which details the accusations against each, is probably the highest quality document ever produced by the Haitian judiciary.



B. Helping National Judiciaries Overcome Obstacles to Prosecution

1. Supporting Better National Justice Systems

The ICC could most effectively aid national judiciaries with human rights cases by hiring and training staff from countries that need the most help, and by providing jurisprudence. In both cases, however, the potential advantages also carry the potential risk that international prosecutions will be privileged at the expense of national prosecutions, and that the gap between the two will widen. The Court should take measures to mitigate this possible harm.

The ICC should, as part of its recruitment, target lawyers and judges from countries likely to have trials for crimes within the ICC mandate. The technical training and exposure to higher standards would make Court alumni able to assist with human rights trials in their native countries when the opportunity arose. The philosophical connection with an international network (with the possibility of future work abroad if the political situation required) would make the alumni more willing to take an active role in trials in their native countries. The ICC could foster this through a program of hiring investigators, prosecutors, and other staff from countries that are either already experiencing large scale violations of human rights or are likely to do so because of ethnic conflicts, a history of authoritarian rule, or other factors. For example, the Rwanda tribunal could have recruited Haitian lawyers or could now be recruiting lawyers from Sierra Leone, Congo, or other states likely to need the services of jurists trained in human rights trials. These lawyers could work on ICC cases and, when appropriate, return to their home countries to prosecute national cases. In the short term, the training would strengthen the national judiciary's ability to prosecute (by providing trained, experienced personnel), and increase public confidence in national cases prepared by alumni who would carry the prestige of the ICC. In the long term, lawyers cycling out of the ICC could form a beachhead in the fight to make their respective national judiciaries more responsive to victims and more respectful of the law.

Recruiting lawyers from countries like Haiti would benefit the ICC directly, as well as promote its general goals. An individual from a country with a similar history, legal tradition, or infrastructure as the target country would have perspectives and abilities lacking in investigators with less shared experience. He or she would

have an immediate advantage in surmounting cultural barriers, which would lead to better collection of information, and more accurate evaluation of testimony and other evidence. An interviewer with a shared culture would make victims feel more comfortable, and usually more free with their information.<sup>121</sup>

The ICC Statute permits the recruitment of lawyers likely to carry out national prosecutions down the road, but does not require or otherwise encourage a systematic program.<sup>122</sup> Article 44 of the ICC Statute allows the Court to recruit investigators and other staff,<sup>123</sup> and Article 36 encourages an equitable geographic representation in hiring.<sup>124</sup> Yet a general recruitment, even enhanced by geographic equity, would not alone ensure that these positions go to the states that most need trained human rights lawyers. The most needy states are the least likely to have lawyers of “the highest standards of efficiency [and] competency” come to the attention of the prosecutor or registrar.<sup>125</sup> To have a noticeable impact on the weakest national judiciaries, and to ensure a mix of perspectives beyond geographic, such as economic and cultural, the ICC must put in place a systematic plan for recruiting and hiring with a view to reinforcing the most needy national judiciaries.

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121. The author’s experience in Haiti provides countless examples of Haitian or African colleagues understanding a situation, or establishing a relationship with a witness much better or faster than a colleague from an industrialized nation (including the author himself). If there is a shortage of qualified candidates, an investment by the Court in raising smart, motivated candidates up to the appropriate level would be rewarded by performance both with the Court and back in the home country.

122. See Working Group of the A.B.A. Sec. of Int’l L. & Prac., Draft Rules of Procedure and Evidence for the International Criminal Court R. 28 (1999) [hereinafter ICC Draft Rules].

123. ICC Statute, *supra* note 1, art. 44.

124. *Id.* art. 36. This rule would allow the ICC to hire staff with training in trauma and gender for the Victims Unit. The same logic that applies to hiring developing world lawyers and investigators applies to this unit. Hiring developing world staff would both provide valuable experience to these individuals and aid the ICC in that many victims may feel more comfortable dealing with a person from a similar background.

125. ICC Statute, *supra* note 1, art. 44(2). Without a structure in place, the tendency will be to hire from countries that need the least help, those with the strongest talent pool. This will be exacerbated if the ICC makes frequent use of gratis personnel of state parties under Article 44(4), who will come disproportionately from wealthy countries. However, Article 44(4) does limit this use to “exceptional circumstances,” which should be respected.

The benefits of ICC recruitment in countries needing its help could be offset by “brain drain,” or the perception that there are two justices, with the international kind better financed, more prestigious and more effective. Therefore, ICC policies should be designed as much as possible to narrow the gap between the two “systems of justice.” Staff should be encouraged to return to their home countries and apply the lessons learned at the Court.<sup>126</sup> The Court could make special leave provisions for work on selected national prosecutions, and even subsidize its staff members who return to work in national judiciaries.

The ICC will probably have little positive impact on local infrastructures or judicial salaries, since building courthouses, providing file cabinets, and paying salaries is well outside its mandate. Of course, to the extent that the ICC assists the national judiciary by sharing information on its investigations or prosecutions, it would relieve financial pressure in a particular case.<sup>127</sup> Conversely, the ICC may have a negative impact on salaries and infrastructure. It may reduce foreign assistance to the national judiciary, either because donors feel that the ICC has fulfilled the need for justice, or simply because scarce resources diverted to the ICC cannot go elsewhere.<sup>128</sup> By its mere existence, the ICC will have some positive impact on judicial training, as its decisions can serve as models for formal or informal judicial training.<sup>129</sup>

The ICC will likely have little direct effect on law reform or procedural reform, as these issues are beyond its mandate. To the extent it moves toward guaranteeing “lasting respect for the enforcement of international justice,”<sup>130</sup> it might encourage countries to rat-

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126. Policies that will encourage staff to return to their home countries include applying maximum terms for certain categories of staff, liberal leave policies, and seniority credit for work done with national prosecutions.

127. See ICC Statute, *supra* note 1, art. 53; ICC Draft Rules, *supra* note 122, R. 36–38. The prosecutor could invoke her power to investigate and assist in preparing the case for trial and then ultimately defer to the national prosecution.

128. Donor countries frustrated with the lack of progress in national judiciaries often look for ways to divert judicial assistance and other funds away from the national government. See *generally* Request for Proposals for Its Administration of Justice Program in Haiti, USAID, Doc. 521-99-007, Sec. C (on file with author).

129. The value of training may be mitigated if the local judges, seeing that the models of justice require a logistical capability beyond that available, use that as an excuse for resignation.

130. ICC Statute, *supra* note 1, preamble.

ify useful international instruments. Its mandate would not allow it to directly attack the problem of resistance within the society to the prosecutions. However, it may do so indirectly, by the threat of an international prosecution.<sup>131</sup>

The ICC's jurisprudence will likely help the national prosecutions in two ways: by providing precedents to national courts and by providing forms or templates to prosecutors. The ICC will likely settle many questions of law that it has in common with national courts. Although such resolutions would not be binding, they would be a useful guide. The law the Court applies, after its own Statute and rules, comes from both treaties and principles of international law, and general principles of law derived from national legal systems.<sup>132</sup> The Court's analyses pursuant to these authorities would be especially useful in countries without significant jurisprudence relevant to human rights cases.

In Haiti, for example, the judiciary has little experience with human rights cases or complex litigation. Consequently, the judiciary has little precedent on issues likely to arise in human rights cases, such as the legal responsibilities of subordinates and superior officers, accomplice or accessory liability, and definitions of terms like war crimes and crimes against humanity. ICC decisions would suggest a way to analyze these issues and a potential substantive result. In a similar manner, ICC decisions and pleadings submitted by parties would be useful as templates or references for prosecutors<sup>133</sup> and lawyers in drafting complaints, or briefing important issues of law. As both jurisprudence and forms, the ICC pleadings and decisions would set a high standard for quality, which would encourage national actors to improve the quality of their work.

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131. Among the accomplishments of the effort to try Augusto Pinochet in Spain was its effect on the national discourse on impunity in Chile. As the Chilean government pursued Pinochet's release, it was forced to answer critics by saying that the national judiciary was up to the task of prosecuting the former dictator. It appears that this process will lead to Pinochet's trial in Chile. Clifford Klaus, *Pinochet Reportedly Stripped of Immunity in Secret Court Vote*, N.Y. Times, Aug 2, 2000, at A4.

132. ICC Statute, *supra* note 1, art. 21.

133. In the civil law system, they would be useful to the *juge d'instruction*, an office which combines prosecutorial and judicial functions during the pre-trial phase. In Haiti, materials from both Rwanda and Yugoslavia have been used in pre-trial preparation.

The limit to the usefulness of ICC materials will be the extent to which they are easily available in the non-industrialized countries. The Court's judgments and "other decisions resolving fundamental issues" are to be published in Arabic, Chinese, English, French, Russian, and Spanish, the Court's official languages.<sup>134</sup> Although most judges and prosecutors speak one of these languages, it might be difficult for them to access the decisions. While a website could reach much of the world, the areas where it does not reach might be where the material would be the most useful. Accordingly, the ICC should have a program to systematically make available its decisions in developing countries via an appropriate technology.

ICC jurisprudence could also have a negative effect on national prosecutions by creating two standards of justice, one international and the other national. This could lead to a perception by national judiciaries or donor countries that national judiciaries simply cannot provide adequate justice. With Rwanda, for example, the International Tribunal receives frequent, usually positive attention in the international press, while the local prosecutions receive mostly negative attention, such as when they execute someone. Local authorities have often complained that the International Tribunal does not share its information with them, does not profit sufficiently from local expertise and information,<sup>135</sup> or trumps local authority on extradition.<sup>136</sup>

The perception of a large gap between national and international tribunals could discourage local authorities from even trying to initiate human rights cases and donor countries from helping them try. The ICC would help close this gap any time it helps a local judiciary increase its capability. This could also ensure that cooperation goes both ways; besides providing help, it could make sure that the Court receives any help that local authorities can provide. Finally, the ICC should coordinate as much as possible with local authorities, keeping them fully informed about the Court's activities and jurisprudence.

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134. ICC Statute, *supra* note 1, art. 50.

135. See Vandeginste, *supra* note 117, at 5 (describing gulf between ICTR and local population, and the problems caused by it).

136. See de Beer, *supra* note 40, at 30.

## 2. Prioritization of Justice

Prioritization of justice among competing claims on a government is a political issue. The ICC's likely impact on the question is complex and will differ with varying situations. The problem is especially complicated for outside actors trying to influence the priorities without understanding the broader context. Although it might be easy to say that Serbia or Myanmar should spend less on weapons and more on justice, it is not as simple to ask Haiti to pay teachers less so that judges can make more. In transitional countries it is often not just a matter of allocating money, but of allocating the time and energy of the limited group with the management capacity and power to implement the initiative.

The way in which the ICC could most help a national government move justice up on the list of priorities is by providing technical assistance to make the prosecutions as easy as possible. One reason that justice for human rights violators may be pushed down the list is the fear of failure. For a transitional government trying to consolidate democracy, especially one having mixed success, prominent human rights trials pose significant political, social, and security risks. If the trial is not successful, the government loses credibility and confidence in the justice system is further eroded, thus creating another flash point for criticism.<sup>137</sup> Even if it is successful, it may require the diversion of too many resources from elsewhere.

To the extent that human rights prosecutions can be made less expensive and more achievable, they will be raised higher on the list of government priorities. By training national lawyers and officials, providing exemplary jurisprudence, and assisting the domestic effort with the collection, analysis, and preservation of evidence, the ICC would make national prosecutions more attractive to national decision makers, increasing the chances of having resources allocated in that direction.

The ICC's most immediate political impact, of which it is both a cause and an effect, would be that justice for human rights violations is taken more seriously worldwide.<sup>138</sup> This trend will give inspi-

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137. The Haitian judiciary continues to be criticized for the handling of the Maly case four years later, and fear of a repetition engenders caution among judicial officials, according to discussions by the author with Ministry of Justice and other judicial officials from 1994 to the present.

138. *Accord Bassiouni*, *supra* note 108.

ration to advocates for prosecution and ammunition in the internal skirmishes over political priorities. It may also help make promotion of trials a foreign policy goal of donor nations.

### 3. Resistance to Prosecutions Within Society

The ICC would be effective in pushing reluctant states to prosecute, especially where there is a threat of the Court taking jurisdiction. The possibility of an ICC trial would encourage national prosecution, either out of pride, the fear of appearing unable or unwilling to enforce the law, nationalism, or a desire to keep one's nationals from international jurisdiction.<sup>139</sup> Looming ICC jurisdiction could push reluctant governments to prosecute, as well as provide support for governments sympathetic to prosecution against their internal opposition.

The ICC's utility as a stick to encourage national prosecutions is limited, however, by the territorial state's ability to keep the Court at bay. The easiest way to do this is through Article 17 of the Statute, which makes a case inadmissible if a state is investigating or prosecuting it, has decided not to prosecute, or has already prosecuted.<sup>140</sup> Under Article 18, a state can defer an ICC investigation on the grounds that it is conducting its own investigation.<sup>141</sup>

The ICC Statute does allow for a case to be declared admissible if the territorial state is not willing or able to prosecute, but in practice this language will be very difficult to apply. To determine "unwillingness," the Court must consider: a) whether the state was acting to shield the accused from responsibility, b) whether there has been a delay "inconsistent with an intent to bring the person concerned to justice," and c) whether the state proceedings were independent and impartial.<sup>142</sup> To determine "inability," the Court must look for a "total or substantial collapse or unavailability" of the national system.<sup>143</sup>

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139. This leverage comes in the form of the ICC's ability to assert jurisdiction over a situation without the consent of the state party either by referral from the Security Council or on the prosecutor's own motion. *See* ICC Statute, *supra* note 1, arts. 13, 15.

140. *Id.* art. 17(1)(a)–(c).

141. The Pre-Trial Chamber can override the state's request or stop the deferral, but that too can be appealed. *Id.* art. 18.

142. *Id.* art. 17(2).

143. *Id.* art. 17(3).

These standards are sufficiently vague to allow a country acting in bad faith to go through the motions of a prosecution and either postpone it indefinitely or arrange an acquittal. The prosecution of the 1993 assassination of Haitian Minister of Justice Guy Malary provides an example of how a weak prosecutor could defeat the goals of the ICC. In the Malary case, the government actually tried to obtain a conviction, but blundered along the way. Although some individual actions appeared inconsistent with a desire or ability to prosecute, and the trial as a whole was a fiasco, finding either unwillingness or inability would have been very difficult under the Statute's standards. A country acting in bad faith could engineer an outcome like the one in the Malary case quite easily.

From Malary's assassination under the dictatorship until the restoration of democracy a year later, the "unwillingness genuinely to prosecute" was beyond question. In 1995, however, arrests were made in the case, and in 1996 two suspects were tried.<sup>144</sup> The trial itself was a comprehensive exposition of the legal system's shortcomings, as it was poorly investigated, prepared, and presented.<sup>145</sup> Even the selection of the jury, which acquitted the defendants, was procedurally and substantively flawed.<sup>146</sup>

Despite these problems, there was clearly not an "unwillingness to prosecute" in the traditional sense—the government brought the case to trial and presented the inculpatory evidence that was at hand to a jury. There was no desire to protect the accused—in fact, despite an acquittal, both suspects spent three years in prison before being released for lack of evidence of any other crimes. There was not a "collapse or unavailability of the judicial system" in the classic sense, in that the government was able to arrest two prominent sus-

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144. The author observed the trial.

145. See Petitioner's Memorandum of Supplemental Information at 3, Lawyers Comm. for Human Rights v. Republic of Haiti, Case No. 11,335, Inter-Am. C.H.R. (filed Feb. 19, 1999) (arguing that the investigation and trial were so "riddled with abnormalities and errors" that the Haitian government failed to meet its international obligation to provide judicial protection) (on file with author). See also Amnesty International, *Haiti: A Question of Justice* 16 (1996) (noting "serious deficiencies" in the trial); Human Rights Watch, *Haiti: A Thirst for Justice, a Decade of Impunity* 23 (1996) (describing lack of preparation by the prosecution and the prosecution's weak presentation of the case).

146. See *supra* note 144. See also Human Rights Watch, *supra* note 145, at 23 (noting failure of prosecution to object to seating of a jury openly hostile to the prosecution).



pects and bring them to a public trial where the jury was able to make an unpopular decision to acquit. The mere passage of time, over seven years, could not make the case admissible under the ICC rules, since only a delay “which in the circumstances is inconsistent with an intent” to prosecute allows a finding of unwillingness.<sup>147</sup>

It would seem difficult under these circumstances for the ICC to make a finding of unwillingness and even more difficult to expose the acquitted defendants to double jeopardy by declaring the trial an intentional shield and inconsistent with an intent to prosecute.<sup>148</sup> Yet the fact remains that seven years after the political assassination of the Minister of Justice, there has been no conviction and no preparation for a subsequent trial. This ambiguous situation was created by a government making some, if not its best, effort to investigate and prosecute a hard case.<sup>149</sup> In any legal system, the potential for delays is large regardless of the prosecutor’s good faith. In developing or transitional states, justice and other governmental systems break down and tasks fall through the cracks between different actors. It is, in many cases, impossible to draw the line between legitimate difficulties and a lack of will, or attribute poor individual performances to the whole system.

A government wanting neither a legitimate national trial nor ICC jurisdiction could intentionally create the same ambiguity. It could send investigators out and have them return without sufficient evidence because witnesses are hard to find or afraid. Procedural irregularities could be planted and defendants could be freed on technicalities. Witnesses could recant.<sup>150</sup> A good faith prosecutor could be overmatched at trial. Selection of the jury pool, and of the jury itself, could be easily manipulated. If done well, such a strategy would make it impossible for the Court to declare the state unwilling or unable to prosecute.<sup>151</sup>

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147. ICC Statute, *supra* note 1, art. 17(2)(b).

148. *Id.* art. 20(3).

149. *Cf.* Lawyers Committee for Human Rights, *supra* note 145, at 13 (arguing that “the trial exemplified how the Government of Haiti failed to discharge its minimum responsibility for the diligent prosecution of human rights offenses”).

150. Again, this can happen with international tribunals. In the ICTY Tadic trial, a major prosecution witness conceded after his testimony that he had lied, tainting the whole case. Scharf, *supra* note 109, at 199.

151. Another issue would be the ICC’s interest in taking a case that was a difficult one to prove and its ability to do a better job than the territorial state, especially if

If a sham investigation or prosecution does not deter the ICC prosecutor, a territorial state could try to convince the ICC that the case is not of sufficient gravity,<sup>152</sup> challenge a prosecutor's refusal to defer to the investigation,<sup>153</sup> and appeal the Pre-trial Chamber's rejection of this challenge.<sup>154</sup> It could also convince the prosecutor that "an investigation would not serve the interests of justice" because of the age or infirmity of the accused, among other things.<sup>155</sup>

A prosecution could also be delayed or prevented by pressure from either the target state or one of its allies. A state could apply financial pressure by declining to pay its assessed contributions to the ICC. It could reward or punish specific prosecutors or prosecutions by withholding or making voluntary contributions.<sup>156</sup> States could use their cooperation, provision of expertise, evidence, or materials as leverage on specific cases or with the Court as a whole. Judges are nominated by states and elected by the States Parties,<sup>157</sup> as is the Prosecutor,<sup>158</sup> and many may look forward to future employment with their national governments.<sup>159</sup> Prosecutors can be removed by a simple majority vote of the States Parties.<sup>160</sup> States can apply pressure through the Security Council to defer the investigation for a twelve month renewable period.<sup>161</sup> If none of these strategies worked, a target state could subsequently make it very difficult for the prosecutor to conduct an investigation on its soil and encourage allied nations to do the same. Thus, a reluctant state party could delay a pro-

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the cooperation of local officials was in doubt. Furthermore, if the territorial state did not want one of its citizens to be put into the ICC's hands, his non-arrest could be easily arranged.

152. See ICC Statute, *supra* note 1, art. 17(1)(d).

153. *Id.* art. 19.

154. *Id.* art. 18(4).

155. *Id.* arts. 53(1)(c), 53(2)(c).

156. *Id.* art. 116. Article 116 allows assistance from governments, organizations, individuals, and corporations, but does not restrict the contribution to the Court's general funds.

157. *Id.* art. 36.

158. *Id.* art. 42.

159. Both former chief prosecutors of the ICTY left for their national supreme courts. Black & Herman, *supra* note 110, at 25 (former Chief Prosecutor Louise Arbour named to Canada's highest court).

160. ICC Statute, *supra* note 1, art. 46(b).

161. *Id.* art. 16.

ceeding while the support for it erodes, or even prevent a proceeding altogether.

There is also the risk that a potential ICC proceeding could serve to discourage national prosecutions by decreasing the pressure on the state to prosecute. This would happen where there is public pressure for justice that the state, despite its efforts, has difficulty satisfying. The prospect of an ICC prosecution could relieve national and international pressure on the government by redirecting attention to the Court. If the ICC prosecutes, the conviction of prominent defendants might decrease the pressure on the local judiciary to pursue the remaining defendants. The state may then be tempted to say that “justice has been done.”<sup>162</sup> An acquittal by the ICC, given the image and capabilities of the Tribunal, would likely discourage future national efforts.<sup>163</sup>

#### 4. Collection, Analysis, and Preservation of Evidence

The ICC could complement a national judiciary by assisting with the collection, analysis, and preservation of evidence. For example, the ICC could pass information gathered through its prosecution of the most prominent defendants on to the national judiciary for the trials of subordinates. In addition, the prosecutor could, after an investigation, decide that the national judiciary would be the better forum for prosecution, transfer the file, and defer to the local court. Where there are common issues of fact, the ICC could also share information about a prosecution involving one country with a second country.<sup>164</sup> To maximize the potential of this assistance, the ICC should institutionalize a systematic program for sharing evidence with national courts.

The assistance that the ICC provides in practice, however, will ultimately depend on both the amount of evidence the ICC is

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162. An analogy can be made to the prosecution of the Raboteau case in Haiti. Although it is the trial of one specific event, which was far from the worst episode of the dictatorship, it is often called “the trial of the coup d’état.” This has led some to express fears that once the “trial of the coup d’état” is over, there will be no need to try the hundreds of other potential accused on behalf of the hundreds of thousands of victims.

163. The ICC Statute prohibits national court trials for the same crimes of a person acquitted by the ICC. ICC Statute, *supra* note 1, art. 20.

164. An example of an applicable case would be Operation Condor, where several South American dictators cooperated in exterminating pro-democracy activists.

able to accumulate and its willingness to share. The ICC would be most effective in providing scientific and technical assistance, collecting information from third parties, and obtaining information from victims, witnesses, and defendants outside of the national court's jurisdiction. The Statute allows the Court to provide information to a state that is investigating a crime in the ICC's jurisdiction or other serious crime (for example, crimes committed before the ICC came into being, or crimes where there was no nexus with an ICC member). The assistance can include providing evidence from the Court's investigation or trial and allowing the questioning of detainees.<sup>165</sup>

Although the ICC Statute does not expressly provide for it, the Court will have access to a high level of scientific and technical expertise.<sup>166</sup> The ICC could lend this technical assistance to corroborate eyewitness testimony, including forensic anthropology evidence,<sup>167</sup> medical examinations of victims, statistical analysis,<sup>168</sup> and ballistics evidence where still available. Where the ICC is investigating ongoing violations, especially with refugees, it could arrange for almost contemporaneous medical examinations of victims. The ICC could also develop a program of collecting and preserving evidence in ongoing situations, including victim and witness testimony, photographs, and clothing.

Much of this type of information would be collected outside the prosecuting state's borders.<sup>169</sup> The national judiciary may not have the same access to such information if, for example, the transitional government was not effectively in power at the time. Indeed, this was the case with the constitutional government of Haiti during the dictatorship. The transitional state may also have good relations

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165. ICC Statute, *supra* note 1, art. 93(10).

166. *Id.* art. 54 (a prosecutor shall "extend the investigation to cover all facts and evidence relevant to whether there is criminal responsibility"). *See also* ICC Draft Rules, *supra* note 122, R. 91; M. Cherif Bassiouni, *Commission of Experts Established Pursuant to Security Council Resolution 780*, 5 *Crim. L.F.* 279 (1994).

167. *See* An Inter-American Team of Forensic Anthropology Consultants, *supra* note 31, at Introduction, D1 (noting that forensic anthropologists provided important assistance to the Haitian Truth Commission and Raboteau case).

168. *See id.* (stating that the anthropology consultants performed a statistical analysis of hospital records and truth commission information).

169. For example, interviews of refugees, scientific or medical examinations of refugees, physical evidence in their possession, statistical analyses, and many other types of evidence would not necessarily be collected within the prosecuting state's borders.

with the country of refuge, or the prosecutors may not have the resources for international travel. Although the ICC's disclosure of such information may be limited by witness confidentiality concerns or tactical decisions to keep the information secret as long as possible, in the case where the territorial state is conducting prosecutions, those concerns are slight.<sup>170</sup>

In many cases, the amount of useful information that the Court could collect on its own is dwarfed by the information available from third party states. Haiti is a good example of this: the repression took place before journalists, foreign governments, and international human rights missions—just about everyone but the constitutional government. Information could be collected in such a case from witness interviews, intelligence reports, intercepted communications, and satellite and other photographs. Information produced by others but seized by the third party state could also be collected by the Court. Obtaining this information would depend largely on the amount of political leverage the ICC possesses and is willing to exercise. The ICC Statute allows the Court to request documents and other cooperation for mutual legal assistance from state parties or intergovernmental organizations.<sup>171</sup> The ICC, however, has no way of enforcing this order against an uncooperative state.<sup>172</sup> Even if it possesses evidence provided by a state, it cannot turn it over to a national prosecution without the source state's consent.<sup>173</sup>

History shows that third state cooperation cannot be assumed. The commission of experts for Yugoslavia received substantial cooperation from some quarters, but disappointingly little in others.<sup>174</sup> Information furnished to the International Criminal Tribunal

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170. The Haitian Truth Commission investigators asked all of their witnesses whether they wanted their testimony kept secret. Although the military and paramilitary groups posed a significant threat at the time, almost no witnesses outside of Port-au-Prince asked for confidentiality, and less than one third in the capital requested confidentiality. (In the course of his work investigating and prosecuting human rights cases, the author has reviewed hundreds of interview forms prepared by CNVJ investigators.) See generally Truth Commission Report, *supra* note 5.

171. ICC Statute, *supra* note 1, arts. 86, 87.

172. *Id.* art. 87. All the Court can do, with respect to non-cooperation by either a state party or non-party, is to communicate the non-cooperation to the Assembly of Parties or, where applicable, the Security Council.

173. *Id.* art. 93(10)(b)(ii)(1).

174. See Bassiouni, *supra* note 166; Scharf, *supra* note 109, at 46.

for the Former Yugoslavia (ICTY) has varied widely according to the donor states' political objectives.<sup>175</sup> Although the United States sent 20,000 troops to stop human rights violations in Haiti,<sup>176</sup> and is spending millions on Haiti's justice system, it has been much less generous in providing information important to the human rights trials.<sup>177</sup> Experience in analogous situations shows that political pressure can sometimes bear fruit.<sup>178</sup> The ICC should use its unique visibility and moral clout to obtain as much information as possible from reluctant states.

Several factors mitigate the ICC's ability to obtain cooperation. The first is that, especially in its formative years, the ICC may be unwilling to risk alienating potential or actual states parties to the treaty or it may be wary of scaring off prospective parties. Second, a requested state may invoke a national security exception to disclosure.<sup>179</sup> The ICC Statute does force the state to justify the invocation of this exception and allows the ICC to make an independent judgment as to the exception's applicability.<sup>180</sup> In the end, however, the enforcement of this judgment on a reluctant state is a political

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175. See Black & Herman, *supra* note 110, at 25–28 (NATO members provided ample documentation of Serb responsibility for war crimes during NATO's bombing of Serbia in April and May 1999, but refused to supply requested materials regarding similar Croat atrocities).

176. The legal justification for the invasion was based on the doctrine of humanitarian intervention resulting from the widespread human rights violations. S.C. Res. 940, U.N. SCOR, 49th Sess., 3413th mtg. at 1, U.N. Doc. S/RES/940 (1994).

177. The FRAPH/FADH documents, which belong to Haiti, are the most obvious example, but the United States has also been reluctant to turn over its own documents. See *supra* note 78 and accompanying text. One exception is provided by a Freedom of Information Act request, through which the State Department provided documents for the Raboteau case. These documents discredit the military's humanitarian intervention pretext for the operation. See S.C. Res. 940, *supra* note 176, at note 150.

178. The campaign for information about Nazi assets held by Swiss banks is an example of a strategy combining legal and political pressure. More recently, international campaigns have successfully induced the United States to release documents involving human rights violations in Chile. See Press Release, Human Rights Watch, CIA, State, NSC Documents Declassified on Chile (June 30, 1999); *Argentines Exhort Albright on Files*, Associated Press Newswire, Aug. 16, 2000; Equipo Nizcor, Honduras le Pide a los Estados Unidos la Desclasificación Completa de los Documentos Sobre la Base El Asuacate (2000) (internet announcement citing Associated Press reports, on file with the author).

179. See ICC Statute, *supra* note 1, arts. 72, 93(4).

180. *Id.* arts. 72(5), 87(7).

matter for either the Security Council or the Assembly of States Parties.<sup>181</sup> Even if a state did provide information to the ICC, a confidentiality restriction may prevent it from being passed on to the national prosecution.<sup>182</sup>

A national investigation could also help the ICC, as the strengths and weaknesses of the two would be complementary.<sup>183</sup> Although the ICC will likely have relatively strong scientific, technical, and administrative expertise, it will almost certainly be short on local knowledge, including informer networks and cultural information important to evaluate both witness credibility and defendant responses to interrogation. Collaboration with the local investigation will therefore be mutually beneficial.

The ICC Statute allows broad sharing of evidence between the Court and national judiciaries.<sup>184</sup> What it does not do is institutionalize programs that ensure that such assistance will be an integral part of the Court's work. Without such programs, it is possible that assistance to the states that need it the most, the poorer or more fragile countries, will be overlooked in the day-to-day pressure of the ICC's caseload. A request for information delivered by a wealthy state with frequent contact with the Court, influence over its finances, and access to the international media would receive prompt attention under the Statute. Absent a systemic program for processing the requests, an inquiry from a prosecutor mailed from a small, poor country far from the Hague might end up permanently at the bottom of someone's to-do box.

## 5. Arrests

The ICC could best help national prosecutions with arrests by providing information to justify warrants, and information that would help to identify and locate suspects. Although under certain provisions a person arrested pursuant to a Court warrant could be transferred for a national prosecution, these provisions are extremely limited.<sup>185</sup> As with evidentiary assistance, the ICC's help in appre-

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181. *Id.* art. 87(7).

182. *Id.* art. 55.

183. This is assuming that the national system was inclined towards prosecutions in the first place.

184. *See supra* text accompanying note 164.

185. ICC Statute, *supra* note 1, art. 90.

hending individuals is technically possible, but ultimately will depend on the political will of other states to help it and its own willingness to share the information.

The ICC has broad powers to issue arrest warrants on the application of the prosecutor to the pre-trial chamber.<sup>186</sup> A warrant may be issued for any of several reasons, including the existence of reasonable grounds to believe the person has committed a crime within the ICC's mandate, or in order to ensure the person's appearance at trial, prevent the obstruction of the investigation or court proceedings, or prevent the continuing commission of crimes under investigation by the prosecutor.<sup>187</sup> The ICC's ability to have these warrants executed is of great benefit to a national prosecution, even if the arrestees are not subsequently handed over to the national effort. Initially, if arrestees are obstructing the ICC prosecution, it is likely that they are also wielding influence over the domestic effort. If they are instrumental for the ICC prosecution, they are likely to have valuable information that the local prosecutors could access via interrogations.

The ICC will be able to arrest some categories of offenders beyond the reach of national judiciaries, such as those protected by official immunity or a statute of limitations in the national court. Under the Statute, a defendant's official capacity does not exempt him from criminal responsibility,<sup>188</sup> and no statute of limitations applies.<sup>189</sup>

The ICC, however, has no police force, and its ability to execute warrants is circumscribed by its reliance on domestic authorities for enforcement.<sup>190</sup> Its ability to issue warrants and obtain arrests is only as effective as the state that is executing the warrant wants it to be. This limitation is amply illustrated by the ICTY, whose 1996 warrants against Radovan Karadzic and Ratko Mladic remain un-

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186. *Id.* art. 58.

187. *Id.* art. 58(1).

188. *Id.* art. 27.

189. *Id.* art. 29.

190. *Id.* art. 59. It is not entirely clear from the text of the ICC Statute if there would be the possibility of a direct enforcement mechanism via some form of United Nations peace keeping force that could potentially execute warrants. *But see* F.M. Lorenz, *Combating Impunity: The Practical Limits on Military Force*, 14 *Nouvelles Études Pénales* 465 (1998).



executed, despite their public appearances in a country occupied by NATO peacekeepers.<sup>191</sup> Defendants could easily evade arrests in countries that have a weak or corrupt police force or are not parties to the ICC Statute. Furthermore, arrestees are brought before a national tribunal before their surrender to the ICC, which provides another opportunity for influence to be exerted to prevent transfer to the Court.<sup>192</sup>

The ICC could probably convince states to apprehend and deliver defendants to it that a national judiciary could not.<sup>193</sup> This ability stems in part from the perception that an international tribunal would be more respectful of a defendant's rights, but also to a large extent from the tribunal's high media profile and ability to exert political pressure. This confidence in the Court over national judiciaries is reflected by the priority given to the Court where a state party arrests an accused who is also the subject of a national extradition request.<sup>194</sup> However, this power is likely to be severely limited in situations where the defendant is found in a state unwilling to cooperate because of a political or strategic affinity with the accused, or where the defendant has been given *de facto* asylum after a political compromise.

People arrested pursuant to an ICC warrant can, in some cases, be transferred to a national court. A person convicted by the Court can be extradited from the host state to another state for trial,<sup>195</sup> with Court approval,<sup>196</sup> after he has served his sentence. The person could not, however, be tried again for crimes for which he has been acquitted or convicted by the Court.<sup>197</sup> A person arrested pursuant to an ICC mandate could also be extradited from the arresting

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191. Scharf, *supra* note 109, at 150–54, 224–25.

192. See ICC Statute, *supra* note 1, art. 59.

193. See *Le Genocide et les Massacres au Rwanda en 1994, la Justice en Question* (report on file with the author). In some cases, countries turned defendants over to the Rwanda tribunal who had been arrested pursuant to a Rwandan extradition request. However, the ability of the ICC to obtain arrests from third countries might be decreased with the possibility that the defendants could be turned over to a state prosecution.

194. See ICC Statute, *supra* note 1, art. 90.

195. *Id.* art. 107.

196. *Id.* art. 108.

197. *Id.* art. 20.

state to a third state, although the Court's request would usually have priority.<sup>198</sup>

The Statute does not provide for transfer of prisoners directly from the ICC to a requesting state, which prevents the ICC from contributing to the national effort in three ways. The first is in a situation where the prosecutor determines that there is evidence of criminal behavior, but not enough proof of a crime under the ICC's jurisdiction. For example, there could be ample evidence that the person was involved in murder, but not that it was part of an attack that was sufficiently widespread or systematic to justify a crimes against humanity conviction.<sup>199</sup> A second way is when the prosecutor determines that a national prosecution would be preferable because the victims prefer it, because the national prosecution would help develop the national judiciary, or because the national courts could do a better job.<sup>200</sup> The third would be if the person were acquitted despite evidence of criminality, because there was an absence of one of the elements of war crimes, crimes against humanity, genocide, or aggression.

## 6. General Insecurity

Although the ICC will have little impact on the overall security situation of a country attempting to prosecute human rights violations, it could mitigate the effect of insecurity on national prosecutions by protecting key witnesses and sharing the witnesses, or their information, with the national prosecution.

The ICC could not protect most of the witnesses likely to be used in a national case, but it could integrate the most important ones into its prosecution and protection programs. A few witnesses beyond the reach of defendant intimidation would not only ensure some testimony, but would also relieve pressure on those remaining in the country. The ICC Statute does not define the parameters of witness protection, but has general provisions for witness protection and the creation of a Victims and Witnesses Unit.<sup>201</sup> Presumably, the

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198. *Id.* art. 90.

199. *See id.* art. 7.

200. *See supra* notes 115–20 and accompanying text.

201. “The court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.” ICC Statute, *supra* note 1, art. 68(1). *See id.* art. 43(6) (creating a Victims and Witnesses Unit).

program will eventually include all necessary pre-trial security, and where necessary, post-trial relocation.

If the ICC does have a program of comprehensive protection for key witnesses, it could gear the program to help national prosecutions by consulting with national authorities, if appropriate, on the selection of witnesses to be protected. A witness' potential assistance to national prosecutions should be a factor in determining whether to offer protection. The actual protection afforded should include protection for the witness to testify at a national trial and appropriate protection after that if appearance at the national trial increases the person's risk.

#### CONCLUSION

The ICC presents a historic opportunity for the international community to take a stand against large scale violations of human rights. However, the Court offers only a limited forum for the international community to take a stand; many of the cases concerning large-scale violations of human rights are prosecuted by national judiciaries. The national courts can try many more cases than the ICC ever could, in a setting that is generally better for the victims and for developing national systems.

The ICC's ability to help national prosecutions, as with its own ability to prosecute, depends largely on states, and how much those states are willing to let it or help it perform those functions. But the ICC Statute specifically authorizes many ways of providing assistance, and there are many other ways that fit within the existing framework. To maximize these opportunities, the Court should integrate assistance to national prosecutions into the core of its work, especially hiring, investigation, witness protection, and arrest activities. Such assistance will help the ICC to be more responsive to the conditions of its target countries, and it will support the judiciaries in a difficult process of transition while they come to terms with the past. Most important, providing assistance to national judiciaries is the only way that the world will have accountability for the majority of crimes under the ICC's mandate.

#### EPILOGUE

After this Article's submission, the Raboteau Massacre trial reached its conclusion. The jury convicted sixteen of the twenty-two

defendants in custody, most of whom received life sentences. The judge convicted all thirty-seven *in absentia* defendants, including the leaders of the dictatorship, all members of the military high command, and leaders of FRAPH, the main paramilitary organization. The court awarded \$150 million in compensatory damages.

National and international observers agreed that the trial was well-prepared and fundamentally fair to defendants and victims alike. The United Nations Independent Expert on Haiti, Adama Dieng, called the trial “a landmark in the fight against impunity” and “a huge step forward” for the Haitian justice system.<sup>202</sup> The United Nations Support Mission to Haiti (MICAHA) added that the Raboteau Massacre case, along with another trial held in August, “prove that the Haitian justice system is capable of effectively prosecuting” human rights cases, “while respecting the guarantees of the 1987 Constitution and International Treaties to which Haiti is a party.”<sup>203</sup>

The Raboteau trial’s success was especially gratifying because it was the result of several initiatives coming together and performing well. Two of the prosecutors and the presiding judge were recent graduates of the Judicial Academy. Two others had recently been promoted to their positions. The victims and witnesses were highly credible and consistent, in large part due to the work of the BAI. The police and prison officials performed their tasks with professionalism. A special office coordinated the extensive logistics flawlessly, and international expert testimony sealed the case against the defendants.<sup>204</sup>

The trial’s principal lesson to the international community is that a poor country with an underdeveloped judiciary making a difficult democratic transition can still provide high-quality justice for its victims. Justice for Raboteau required persistence by the victims and officials, time, and some help from outside. Much of this help—the BAI’s technical and material assistance; the international expertise in forensic anthropology, genetics, and military organization; and training of judges and prosecutors—could effectively be provided by

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202. Press Release, United Nations Independent Expert on Haiti, Raboteau Verdict in Haiti “A Landmark in Fight Against Impunity,” but Case Not Yet Finished, Says UN Independent Expert (Nov. 20, 2000), available at <http://www.unog.ch/news2/documents/newsen/hr00090e.html>.

203. Press Release, United Nations Support Mission to Haiti (MICAHA) (Nov. 20, 2000) (author’s translation) (on file with author).

204. See Brian Concannon, *Justice in Haiti: The Raboteau Trial*, Human Rights Tribune, Dec. 2000, at 11.

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the ICC to countries like Haiti through a program integrated into the Court's core activities.

## Constitution de la République d'Haïti

## **LA CONSTITUTION DE LA RÉPUBLIQUE D'HAÏTI**

**1987**

### **PREAMBULE**

**Le Peuple Haïtien proclame la présente Constitution:**

**Pour garantir ses droits inaliénables et imprescriptibles à la vie, a la liberté et la poursuite du bonheur; conformément à son Acte d'indépendance de 1804 et à la Déclaration Universelle des Droits de l'Homme de 1948.**

Pour constituer une nation haïtienne socialement juste économiquement libre et politiquement indépendante.

Pour rétablir un État stable et fort, capable de protéger les valeurs, les traditions, la souveraineté, l'indépendance et la vision nationale.

Pour implanter la démocratie qui implique le pluralisme idéologique et l'alternance politique et affirmer les droits inviolables du Peuple Haïtien.

Pour fortifier l'unité nationale, en éliminant toutes discriminations entre les populations des villes et des campagnes, par l'acceptation de la communauté de langues et de culture et par la reconnaissance du droit au progrès, à l'information, à l'éducation, à la santé, au travail et au loisir pour tous les citoyens.

Pour assurer la séparation, et la répartition harmonieuse des Pouvoirs de l'Etat au service des intérêts fondamentaux et prioritaires de la Nation.

Pour instaurer un régime gouvernemental basé sur les libertés fondamentales et le respect des droits humains, la paix sociale, l'équité économique, la concertation et la participation de toute la population aux grandes décisions engageant la vie nationale, par une décentralisation effective.

### **TITRE I**

#### **DE LA RÉPUBLIQUE D'HAÏTI**

#### **SON EMBLEME - SES SYMBOLES**

Chapitre II - Du Territoire de la République d'Haïti





Les Ministres nomment certaines catégories d'agents de la Fonction Publique par délégation du Premier Ministre, selon les conditions fixées par la loi sur la Fonction Publique.

ARTICLE 172:

Lorsque l'une des deux (2) Chambres, à l'occasion d'une interpellation met en cause la responsabilité d'un Ministre par un vote de censure pris à la majorité absolue de ses membres, l'Exécutif renvoie le Ministre.

## **CHAPITRE IV**

### **DU POUVOIR JUDICIAIRE**

ARTICLE 173:

Le pouvoir judiciaire est exercé par une Cour de Cassation, les Cours d'Appel, les tribunaux de première instance, les tribunaux de paix et les tribunaux spéciaux dont le nombre, la composition, l'organisation, le fonctionnement et la juridiction sont fixés par la loi.

ARTICLE 173.1:

Les contestations qui ont pour objet les droits civils sont exclusivement du ressort des tribunaux.

ARTICLE 173.2:

Nul tribunal, nulle juridiction contentieuse ne peut être établie qu'en vertu de la loi. Il ne peut être créé de tribunal extraordinaire sous quelque dénomination que ce soit.

ARTICLE 174:

Les juges de la Cour de Cassation et des Cours d'Appel sont nommés pour dix (10) ans. Ceux des tribunaux de première instance le sont pour sept (7) ans. Leur mandat commence à courir à compter de leur prestation de serment.

ARTICLE 175:

Les juges de la Cour de Cassation sont nommés par le Président de la République sur une liste de trois (3) personnes par siège soumise par le Sénat. Ceux des cours d'appel et des tribunaux de première instance le sont sur une liste soumise par l'Assemblée départementale concernée; les juges de paix sur une liste préparée par les Assemblées communales.

ARTICLE 176:

La loi règle les conditions exigibles pour être juge à tous les degrés. Une Ecole de la Magistrature est créée.

ARTICLE 177:



## TITRE XII

### DISPOSITIONS GÉNÉRALES

#### ARTICLE 275:

**Le chômage de l'Administration Publique et Privée et du Commerce sera observé à l'occasion des Fêtes Nationales et des Fêtes Légales.**

#### ARTICLE 275.1:

Les fêtes nationales sont:

- 1) La Fête de l'Indépendance Nationale le Premier Janvier;
- 2) Le Jour des Aïeux le 2 Janvier;
- 3) La Fête de l'Agriculture et du Travail le Premier Mai;
- 4) La Fête du Drapeau et de l'Université le 18 mai;
- 5) La Commémoration de la Bataille de Vertières JOUR DES FORCES ARMÉES, le 18 novembre.

#### ARTICLE 275.2:

Les Fêtes Légales sont déterminées par la Loi.

#### ARTICLE 276:

L'Assemblée Nationale ne peut ratifier aucun Traité, Convention ou Accord Internationaux comportant des clauses contraires à la présente Constitution.

#### ARTICLE 276.1:

La ratification des Traités, des Conventions et des Accords Internationaux est donnée sous forme de Décret.

#### ARTICLE 276.2:

Les Traités ou Accord Internationaux, une fois sanctionnés et ratifiés dans les formes prévues par la Constitution, font partie de la Législation du Pays et abrogent toutes les Lois qui leur sont contraires.

#### ARTICLE 277:

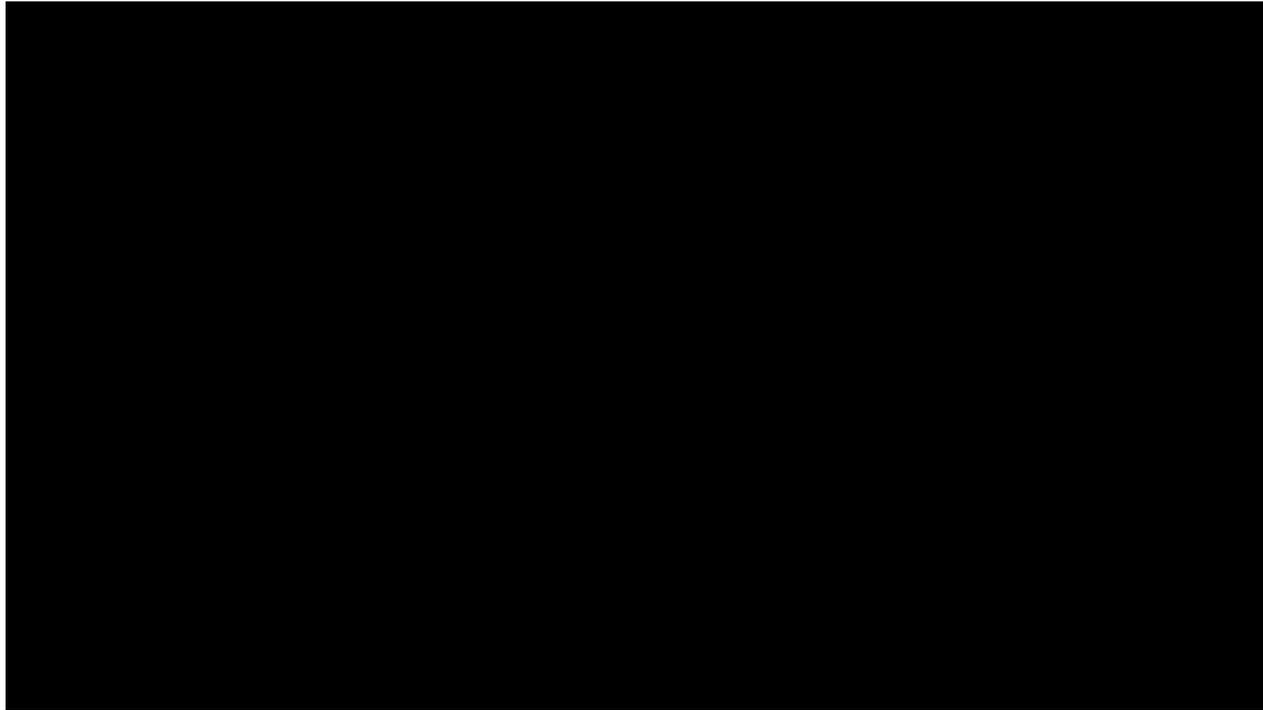
L'Etat Haïtien peut intégrer une Communauté Economique d'Etat dans la mesure où l'Accord d'Association stimule le développement économique et social de la République d'Haïti et ne comporte aucune clause contraire à la Présente Constitution.

#### ARTICLE 278:

*Le CSPJ écrit au Président de la République*, Le Nouvelliste (Sept. 11, 2018),  
<https://lenouvelliste.com/article/192483/le-cspj-ecrit-au-president-de-la-republique>

# Le CSPJ écrit au Président de la République

Publié le 2018-09-11 | [lenouvelliste.com](http://lenouvelliste.com)



Conseil supérieur du pouvoir judiciaire

No CSPJ/09-2018/3052

Port-au-Prince, le 10 Sep 2018

Monsieur Jovenel Moïse

Président de la République

Palais national

Monsieur le Président de la République

Le pouvoir judiciaire représenté par le Conseil supérieur du pouvoir judiciaire (CSPJ) vous présente ses civilités et saisit cette occasion, vu qu'il y a péril en la demeure, d'attirer votre attention sur les conséquences du long retard constaté pour concrétiser les avis de nomination qui vous sont régulièrement acheminés concernant les Commissions et Arrêtés de juges à tous les degrés de juridiction, des tribunaux de paix jusqu'à la Cour de cassation.

Cette situation pendante, depuis les années judiciaires 2015-2016 et 2016-2017, perdurant tout au long de l'année judiciaire 2017-2018 et encore systématique à l'orée de cette nouvelle année judiciaire en perspective dans moins d'un mois, engendre le dysfonctionnement total de l'appareil judiciaire dans presque toutes les juridictions. Des tribunaux et cours ne peuvent plus fonctionner et sont devenus inopérants parce que des juges sont en attente indéfiniment de renouvellement de leur mandat et d'une nouvelle nomination.

En conséquence, le Pouvoir judiciaire représenté par le Conseil supérieur du pouvoir judiciaire, constatant l'ampleur de la situation, se trouve dans l'obligation, face à ses responsabilités régaliennes, de vous demander de faire le nécessaire, dans le meilleur des délais, pour que la rentrée judiciaire 2018-2019, prévue au lundi 1<sup>er</sup> octobre 2018 ne soit pas compromise.

Face à cette situation qui s'annonce préjudiciable au fonctionnement de l'appareil judiciaire, il vous incombe de mettre en application les prérogatives qui vous sont légalement conférées en tant que garant de la stabilité des Institutions étatiques, selon l'Art. 136 de la Constitution en vigueur.

Vous remerciant pour l'attention que vous aurez accordée à cette requête, le Conseil supérieur du pouvoir judiciaire vous prie de recevoir, Monsieur le Président de la République, ses patriotiques salutations.

Pour le Conseil

Me Jules Cantave

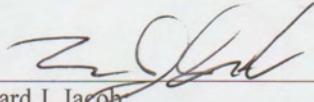
Declaration of David Boniface (Feb. 13, 2012) [Plaintiffs\_0000085-89]



STATE OF NEW YORK )  
)  
)  
COUNTY OF NEW YORK ) ss

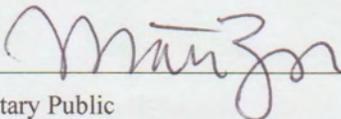
CERTIFICATION

This is to certify that the attached translation is to the best of my knowledge and belief a true and accurate translation from French into English of the attached Plaintiff\_0000085 dated February 13, 2012.

  
Edward J. Jacob  
Divergent Language Solutions, LLC

State of New York  
County of New York

Subscribed to and sworn before me this 27<sup>th</sup> day of January, 2022,  
by Edward J. Jacob.

  
Notary Public

MATTHEW C. ZELAK  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01ZE6350239  
Qualified in Kings County  
Commission Expires November 7, 2024

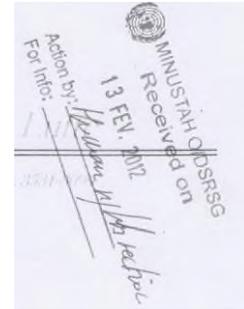






[stamp:] The  
Struggling People's  
Organization

*Organisation du Peuple en Lutte*  
[The Struggling People's Organization]  
27 bis Rue [illegible] Delmas 33[illegible]



I, David Boniface, residing and domiciled in Irois, fugitive since August 2007, hereby file a complaint before the national and international authorities, against the following parties:

Jean Morose Villiéna, Haut-fort Bajou, Kid Bell, Bénéïtoit Bell, Jean-Louis Bell, Vilaire Hilaire, Pierre-Fritz Berger, Kenson Martyr, Roland Vilsaint, Joël Jean-Noël, Lifaite Livret, Savare Pierre, Guersen Pierre, Clarçonne Pierre, Fanel François, Rémy Edmond, Pierrot Boileau, Markeson Dérosier, Ysiace Dimanche, Adlain Chéry, a person known as Chiquine, a person known as Félix.

I present to you, the authorities, the grounds for my complaint against the aforementioned parties.

On July 27, 2007, at around seven o'clock at night, taking advantage of the fact that the police officers were not in Irois, the aforementioned, heavily armed thugs murdered my youngest brother Eclésiaste Boniface in Grand Bassin, following an altercation between the mayor of the commune of Irois with citizen Ostanie Mersier.

The death certificate of Eclésiaste Boniface was issued on July 27, 2007 by Clerk Gethro Chéry.

The death certificate transcript was drafted by Judge Bell Saint-Jean, assisted by Charles Gérald and Clerk Lorenard Wilfrid, on July 28, at seven ten in the morning.

Since that time, these thugs have been trying to end the life of people from the different families Boniface, Martyr, Ismé through the communes, departments, and even the country. There is significant proof of this. We returned to the commune of Irois on October 13 and 14, 2008, and they were already looking for us so they could kill us. Additionally, the other signing parties and I are requesting urgent help from responsible authorities at every level of government and international human rights agencies, in order to ensure our protection, especially after the current judge in Irois officially declared his inability to do so.

### **Chronology of complaints filed with photographs**

08/08/2007      Confirmation of receipt from Commissioner Decharles

- 10/21/2008 Confirmation of receipt from MINUSTHA (human rights)
- 10/21/2008 Notice of receipt from Mr. Frantz Drice, Investigating Judge at the Court of Jérémie
- 10/22/2008 Confirmation of receipt from the Court of Jérémie
- 10/27/2008 Confirmation of receipt from the National Police Center of Haiti (PNH) in Jérémie
- 10/27/2008 Urgent action decided by Amnesty International
- 02/16/2009 Complaint filed with the Court of Port-au-Prince
- 10/29/2009 Complaint filed with the Police Precinct of Irois received by police officer Joseph Pierre Laurent
- 02/14/2009 Complaint filed with the Prosecutor's Office of the Court of First Instance of Jérémie, to Mr. Harycidas Auguste
- 12/03/2011 Document issued by the court of Irois signed by Judge Agnel Romeus declaring his powerlessness before the criminal gangs and asking that we be protected at any national or international higher proceeding.

**Other processes**

- 12/22/2008 Visit to the American embassy to file an application for asylum  
  
Complaint to RNDDH [National Human Rights Defense Network] concerning these two full years of persecution (2007–2009), amputation of Nissage Martyr's right leg, Juders Iseme's loss of vision in his right eye  
  
RNDDH aid project in March 2009

I certify that these declarations are true and conform.

Signed: David Boniface

Other victims who have also decided to sign this declaration: Franckel Isme

Juders Iseme

Nissage Martyr





# Organisation du Peuple en Lutte

27 bis, Rue Louverture, Delmas 33, Haiti. Tel: 3531-3095, 3531-8099

MINUSTAH OJDSSRG  
Receivè nan non  
13 FÈV. 2012  
Action by: *Yveline M. M. M. M. M.*  
For Info: *Yveline M. M. M. M. M.*

Je, soussigné David Boniface demeurant et domicilié aux Irois, en fuite depuis le mois d'août 2007, ai l'honneur de porter plainte devant les autorités nationales et internationales, contre les nommés :

Jean Morose Villiéna, Haut-fort Bajou, Kid Bell, Bénédict Bell, Jean-Louis Bell, Vilaire Hilaire, Pierre-Fritz Berger,, Kenson Martyr, Roland Vilsaint, Joël Jean-Noël, Lifaite Livret, Savare Pierre, Guersen Pierre, Clarçonne Pierre, Fanel François, Rémy Edmond, Pierrot Boileau, Markenson Dérosier, Ysiace Dimanche, Adlain Chéry, Chiquine ainsi connu, Félix ainsi connu.

Messieurs, Mesdames les autorités, voici les motifs de ma plainte contre les susnommés:

Le 27 juillet 2007 aux environs de sept heures du soir, profitant de l'absence des agents de police aux Irois, les bandits sus mentionnés lourdement armés ont assassiné mon frère cadet Eclésiaste Boniface à Grand Bassin, suite à une altercation entre le maire de la commune des Irois avec la citoyenne Ostanie Mersier.

Acte de décès d'Eclésiaste Boniface fait le 27 juillet 2007 par l'officier Gethro Chéry.

Le procès-verbal de constat du décès est rédigé par le juge Bell Saint- Jean assisté du juge Charles Gérald et du greffier Lorenard Wilfrid, le 28 juillet à sept heures dix du matin.

Depuis lors ces bandits veulent exterminer la vie des gens des différentes familles Boniface, Martyr, Ismé à travers les communes, les départements et même le pays. La preuve en est grande, nous revenions dans la commune des Irois les 13 et 14 octobre 2008, ils étaient déjà à notre recherche pour nous tuer. Aussi, les cosignataires et moi, vous demandons-nous l'aide la plus urgente, à vous tous responsables à tous les niveaux de l'tat et des agences internationales de défense des droits humains pour garantir notre protection, surtout après que l'actuel juge de paix des Irois a officiellement déclaré son incapacité de le faire

### Chronologie des plaintes déposées avec photographies

08/08/2007 Accusé de réception du Commissaire Decharles

- 21/10/2008 Accusé de réception de la MINUSTHA (des droits de l'homme)
- 21/10/2008 Avis de réception de Me Frantz Drice, Juge d'Instruction près du Tribunal de Jérémie
- 22/10/2008 Accusé de réception de Justice et Paix de Jérémie
- 27/10/2008 Accusé de réception du Centre de Police Nationale d'Haïti (PNH) de Jérémie
- 27/10/2008 Action urgente décidée par Amnesty International
- 16/02/2009 Plainte déposée à Justice et Paix de Port-au-Prince
- 29/10/2009 Plainte au Commissariat de Police des Irois reçue par le policier Joseph Pierre Laurent
- 04/12/2009 Plainte déposée au Parquet du Tribunal de Première Instance de Jérémie, à Me Harycidas Auguste
- 03/12/2011 Document délivré par le tribunal de paix des Irois signé par le Juge de Paix Agnel ROMEUS déclarant son impuissance face aux bandes criminelles et sollicitant notre protection à toute instance supérieure nationale ou internationale.

#### Autres démarches

- 22/12/2008 Visite à l'ambassade américaine pour une demande d'asile
- Plainte à RNDDH concernant toutes ces deux années de persécution (2007- 2009), amputation de la jambe droite de Nissage MARTYR, perte de la vision à l'œil droit de Juders ISEME
- Projet d'aide de RNDDH en mars 2009

Je certifie ces déclarations conformes et vraies

Signé : David BONIFACE

Autres victimes ayant décidé de contresigner la déclaration : Franckel ISME

Juders ISEME

Nissage MARTYR

*Dominique v. Haiti*, Petition 945-05, Inter-Am. Comm'n H.R., Report No. 9/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007) [Plaintiffs\_0000214]



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***Johel Dominique v. Haiti*, Case 945-05, Report No. 9/07, Inter-Am. C.H.R.,  
OEA/Ser.L/V/II.130 Doc. 22, rev. 1 (2007).**

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REPORT N° 9/07  
PETITION 945-05  
ADMISSIBILITY  
JOHEL DOMINIQUE  
HAITI  
February 28, 2007

## I. SUMMARY

1. On August 16, 2005, the Inter-American Commission on Human Rights (hereinafter “Commission” or “IACHR”) received a petition filed by Mr. Johel Dominique (hereinafter “the Petitioner”) against the State of Haiti (hereinafter “Haiti” or “the State”). The Petitioner is an investigating judge in the western town of Jeremie. On March 1, 2005 while the petitioner was asleep at home, armed bandits surrounded his house and opened fire on the house from the outside. The petitioner managed to survive the attack without sustaining any physical wounds. Following the shooting incident, the alleged victim alerted the departmental police authorities who reportedly initiated an investigation, but which has not produced any results. The petitioner indicated that he alerted the Minister of Justice who did not take any action to proceed with an investigation or provide necessary security for the petitioner. Subsequently the petitioner contacted another investigating judge in Jeremie who took his deposition, but since then he has not received any indication that an investigation is being pursued. On July 15, 2005 the alleged victim stated that suspicious individuals surrounded his house but fled the area when called out by neighbors. It should be noted that a request for precautionary measures was adopted by the Commission in favor of Judge Dominique on August 31, 2005 (MC185-05), requesting the government to take necessary measures to secure the life and physical integrity of the petitioner.

2. The Petitioner alleges that the State is responsible for violating articles 5 (1) and 25 of the American Convention on Human Rights (hereinafter “American Convention”).

3. The State has not presented a response to the facts alleged by the petitioners.

4. In this report the IACHR, after analyzing the information available in light of the American Convention concludes that it is competent to consider the petitioners’ allegations, and as the petition meets the requirements

set out in Articles 46 and 47 of the American Convention, it decides to declare the petition admissible.

## II. PROCESSING BEFORE THE COMMISSION

5. On August 16, 2005, the Commission received a petition dated July 17, from the Petitioner asking for precautionary measures. By letter of August 18, 2005 the Commission acknowledged receipt of the Petitioners' petition.
6. By note of August 31, 2005, the Commission transmitted the pertinent parts of the Petitioner's request to the State and requested that precautionary measures to be taken in favor of Mr. Dominique.
7. On September 15, 2005, the State acknowledged receipt of the Commission's request of precautionary measures.
8. By letter of April 6, 2006 the Commission asked the petitioner to provide actualized information about the investigations taking place regarding the facts mentioned in his petition.
9. By letter of May 5, 2006, the Petitioner submitted additional observations, indicating no advance or results to the investigation.
10. By letter of June 27, 2006 the Commission informed the petitioner that relevant parts of his petition were transmitted to the State, which was given two months to reply.
11. By letter of August 1st, 2006, the State informed the Commission of the receipt of the letter indicating that the letter was transmitted to relevant organs for adequate follow-up.
12. By letter of September 6, 2006 the petitioner informs the Commission of the evolution of the case.

## III. POSITIONS OF THE PARTIES

### A. The Petitioner

13. The Petitioner, Mr. Johel Dominique, is an investigating judge at the Tribunal of 1st Instance in Jeremie located in the Grand Anse Department. He asserts that on March 1, 2005, at two o'clock in the morning he was awakened by a loud detonation that shook his house. The petitioner indicated that armed individuals opened fire on his house and that he and his family sought refuge under their beds to avoid being hit by bullets. Fearing for his life, the petitioner indicated that he and his family remained inside the house until six o'clock in the morning that same day, at which time he exited his home and with the help of his neighbors, he picked up the used cartridges on the floor to preserve them as evidence for the authorities.
14. Following the shooting incident, in the morning of the same day, the petitioner asked the justice of peace in Jeremie, Judge Finey Francois, to go to the scene of the crime and Judge Francois produced an incident report and took the petitioner's deposition. In the report by the Judge Francois, information indicates that at least one bullet hole was found in the wall of the petitioner's house and a bullet casing nearby. Other bullet casings were found on his property.



15. The Petitioner further states that on that same day, he informed the Delegate of the Grand Anse Department, Me. Mombrun Anselme, and the Grand Anse Department police chief, Mr. Michel-Ange Jean Noel about the alleged assault. At this time he provided the police with the collected cartridges from the scene of the shooting in order to assist them in their investigation of the crime. The petitioner states that the Mr. Jean Noel said to him (in the presence of fellow Judge Frantz Drice) that his evaluation of the bullet casings indicated the type of weapon used was an M16 automatic rifle and he further indicated that he had a good idea of the identities of the individuals who carry these weapons. The petitioner states that the police chief assured him that they would do their best to apprehend the perpetrators. The petitioner informed the Commission that the group known to carry heavy automatic weapons in the region is called COREGA, a regional group with political affiliations to the party of former President Aristide, and who reportedly carried out armed attacks following the departure of former president Aristide in February 2004, and subsequently, associated with members of the police in the Grand Anse department. The petitioner alleges that although the cartridges provided information to the police about the type of weapons that were used in the incident, facilitating the task of tracking the perpetrators, no follow-up investigation has been made by police authorities in Jeremie.

16. The Petitioner further states that he addressed a letter to the Minister of Justice, Bernard Gousse, on March 1st, requesting protection for him and his family, but received no response to the request. On March 8, 2005 he sent a formal request to his fellow investigating judge for the Tribunal of 1st Instance in Jeremie, Judge Frantz Drice, to take the appropriate steps to initiate an investigation of the alleged assault.

17. On the morning of July 15, 2005 at approximately 12:30am the petitioner stated that a suspicious individual was positioned outside his house, and fled the area immediately when called out by neighbors.

18. On August 20, 2005, the petitioner informed the Commission that the authorities had not pursued the criminal investigation or responded to the complaint by providing Mr. Dominique with adequate security in order to carry out his functions as an investigating judge. The petitioner further indicated that he is not even sure that an investigation has been formally opened in his case, since he has not seen a formal record (“acte d’instruction”) indicating that a judicial investigation has been launched.

19. The Petitioner states that he does not know the motive for the attack, although he has strong suspicions that the attack was motivated by individuals who were being investigated for criminal acts and who intended to harm him or prevent him from pursuing his criminal investigations. In particular, he suspects that the aggressors are supported by key figures in local government in Jeremie and police officers, who at the time, were subjects of investigations for their alleged involvement in criminal activities.

20. The Petitioner argues that the State is not complying with its obligation to provide a prompt or effective legal remedy in his case, nor has the state taken any measures to provide adequate security for him or his family. The fact that investigations have failed to proceed or produce any results over a period of months, even where police authorities possess evidence in the case, the petitioner alleges that this constitutes a violation of his right to simple and prompt recourse for protection against acts that violate his fundamental rights.

21. Regarding the right to humane treatment, the Petitioner claims that the armed attack in March 2005, was a serious attempt to take his life and constituted a threat to his physical and mental integrity. Further, as Mr. Dominique is a judicial official who is expected to carry out his functions with full independence, impartiality and

free from fear and intimidation, the attack on him and the failure of the state to take prompt and adequate steps to respond to his situation, constitute a failure on the part of the state to ensure protection of his physical integrity.

22. The Petitioner indicates that, since he sent the letter to the Minister of Justice, that approximately one month after the March 1st assault, he received one phone call from a lawyer, Me. Delva, at the Ministry, relaying the Minister's sympathy for what he experienced, meanwhile, Mr. Dominique has continued carrying out his function as a judicial official, exposed to the dangers of threats and acts of intimidation due to his activities as an investigating judge. On September 6, 2006, the Petitioner further informed the Commission that he received another call in July 2006 from the Director of Judicial Affairs at the Ministry of Justice, Mr. Jean Fallieres Bazelais, to inquire about the status of the investigation, at which time he indicated that no progress had been made in the investigation. Mr. Dominique concludes by stating that, as a state functionary, he expected the government to place the police and justice at his disposition so as to continue carrying out his functions free of fear and intimidation.

#### B. The State

23. The State has not presented any response to the facts alleged by the petitioners in his petition, nor has it questioned the admissibility of the petition under consideration.

### IV. ANALYSIS OF ADMISSIBILITY

#### A. Preliminary Considerations

24. The IACHR notes that the State at no time has responded to the petitioners' allegations or questioned the petition's admissibility as it has done for several cases from Haiti in the past[1]. The IACHR recalls that Haiti is responsible for the International obligations it assumed under the terms of the American Convention of Human Rights. Article 48 (1)(a) of the Convention is of particular relevance in that it establishes procedures to be followed when a petition or communication is referred to the Commission. The IACHR shall "request information from the government of the state indicated as responsible for the alleged violations" and "(t)his information shall be submitted within a reasonable period.." The provisions of Article 48 (1)(e) stipulate that the Commission "may request that states concerned to furnish any pertinent information." This obliges State parties to the Convention to provide the Commission with such information as it may require analyzing individual petitions.

25. The IACHR stresses the importance it accords to the information it requests as it provides a basis for the Commission's decisions on submitted petitions. Indeed, the Inter-American Court of Human Rights has affirmed that cooperation of the States represents a fundamental obligation within the international procedural framework established by the Inter-American System :

In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the compliant has failed to present evidence when it cannot be obtained without the State's cooperation.

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a States jurisdiction unless it has the cooperation of that State.[2]

26. The Commission and the Inter-American Court of Human Rights have also stated that “the silence of the defendant or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long the contrary is not indicated by the record or is not compelled as a matter of law”[3]. Bearing this in mind, the Commission reminds the State of Haiti of its obligation to cooperate with the various agencies of the Inter-American system of human rights in order to facilitate their efforts to protect individual rights.

#### B. Competence of the Commission *ratione personæ*, *ratione loci*, *ratione temporis* and *ratione materiae*

27. Petitioners are entitled to lodge a complaint with the Commission pursuant to Article 44 of the American Convention. The Petition designates as alleged victim an individual whose rights Haiti committed to uphold and guarantee given the general obligation to respect rights which it subscribed under Article 1 of the American Convention. The Republic of Haiti has been a party to the American Convention since it deposited its instrument of accession thereto on September 27, 1977. The Commission thus holds that it has the requisite competence *ratione personae* to adjudicate the petition before it.

28. The Commission considers that it is competent *ratione loci* to consider the petition as the alleged violations were committed within the territory of a state party to this treaty.

29. The Commission likewise considers that it is competent *ratione temporis* since the petition relates to acts allegedly committed in 2005 when the obligations assumed by the State following its subscription to the American Convention were in effect.

30. Finally, the Commission holds that it has the competence *ratione materiae* because the case denounces alleged violations of rights which are protected by the American Convention, namely the Right to humane treatment (Article 5), the right to a fair trial (Article 8), and the right to judicial protection (Article 25).

#### C. Other Admissibility Requirements

##### 1. Exhaustion of domestic remedies

31. Article 46(1)(a) of the Convention stipulates that admission of a petition shall be subject to the requirement “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law”. The Convention’s preamble states that the IACHR grants “international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the respective states[4]. The rule of prior exhaustion of domestic remedies allows the state to resolve the problem in keeping with its domestic law before being faced with an international proceeding, which is especially valid in respect of the international jurisdiction over human rights matters.

32. Section 2 of Article 46 states that the provisions in point Article 46 (1) shall not be applicable when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has

been prevented from exhausting them; or

c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

33. The State did not respond to the Commission's communication regarding the petition received, even where the State was duly notified according to Article 30 (2) of the Commission's Rules of Procedure and thereby not having presented an objection to the failure to exhaust domestic remedies. The Inter-American Court for Human Rights has indicated that an exception to the requirement of exhaustion of domestic remedies, if it is to be timely, must be raised in the first stages of the proceedings, failing which, a presumption of a tacit waiver by the state to avail itself of it may be made. Based on the information submitted to the Commission in the petition, the facts as presented, indicating that no legal remedy has been provided to the petitioner, can be presumed to be true. According to the jurisprudence of the Inter-American Court, "the silence of the defendant or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations so long the contrary is not indicated by the record or is not compelled as a matter of law".[5]

34. In this matter, the petitioner alleges that unidentified armed individuals opened fire on his residence with intent to harm him physically and that to date the perpetrators have not been apprehended or prosecuted for their actions, and further states that the investigation into this crime does not appear to have been officially opened, despite several complaints lodged by the petitioner with different police and judicial authorities over the course of several months.

35. The Commission observes that the petitioner was prevented from exhausting domestic remedies in this case, however the facts suggest that the petition is admissible pursuant to an exception to the requirement of exhaustion of domestic remedies in the American Convention. The Commission notes that the alleged violation took place on March 1, 2005, and following this, the petitioner reported the alleged violation to police and judicial authorities on several occasions and made numerous attempts to ensure that an investigation was pursued and concluded. Despite the numerous attempts to exhaust domestic remedies on the part of the petitioner, as of the date on which the petition was presented to the Commission, August 16, 2005, no measures were taken to investigate, apprehend or prosecute the perpetrators of this crime. Additional information from the petitioner indicated that as of September 6, 2006, there was no indication that an investigation had been officially opened in this case, and therefore, no results were reported. The state has not provided an effective legal remedy to the petitioner in 18 months, the investigation phase which should last no longer than two months.[6] In this respect, the Commission concludes that even though the petitioner was prevented from exhausting domestic remedies in this case, the facts suggest that an exception to the exhaustion of domestic remedies, applies here, as contained in article 46 (2)(c) of the American Convention. Thus, the Commission concludes that in this case, the petition is admissible pursuant to an exception to the requirement of domestic remedies as contained in Article 46 (2)(c).

#### D. Time period for submission of the petition

36. Pursuant to Article 46(1)(b) of the American Convention, the general rule is that a petition must be submitted within six months, counted "from the date on which the party alleging violation of his rights was notified of the final judgment". In the petition under consideration, the Commission has established a tacit waiver by the State of its right to invoke non-exhaustion of domestic remedies, thus the requirement of Article 46 (1)(b) of the Convention is not applicable.

37. In this regard, the Commission observes that the petitioners state that the victim started the internal

procedures on March 1, 2005 and that the petition was lodged only on July 17, 2005. The IACHR considers that it was presented within a reasonable time frame.

#### E. Duplication of procedures and *res judicata*

38. The Commission understands that the subject matter of the instant petition is not pending settlement before any other international organization nor does it reproduce a petition already examined by this other international organization. Accordingly, the requirements established in Article 46 (1)(c) and 47 (d) are satisfied.

#### F. Characterization of the facts alleged

39. Article 47(b) and (c) of the Convention, as well as Article 34(a) and (b) of the Commission's Rules of Procedure consider a petition inadmissible if it does not state facts that tend to establish violations of the rights guaranteed by the Convention or other applicable instruments, or if the petitioners' or state's arguments indicate that the petition is manifestly groundless or out of order.

40. The petitioner alleges that the State is responsible for violations of his rights under Articles 5 and 25 of the American Convention as summarized in part III above. The State did not present observations or information on the violations alleged by the petitioners.

41. Based on the information submitted by the petitioners and without prejudice to the merits, the Commission concludes that the petition contains allegations that tend to establish violations of the rights protected by Article 5.1 and 25 of the Convention, while, in keeping with the principle of *iura curia novit*, the Commission tends to find a violation of Article 1(1) and 8(1). Noting the petitioner's allegation of a suspected connection between the perpetrators of this act and state actors, the Commission notes that this connection, where substantiated during the analysis of the merits of the case, could constitute the basis for the violation of Article 5 (1) of the Convention. In addition, the IACHR considers that based on the information submitted, the petitioners' allegations are not manifestly groundless or out of order. Accordingly, the IACHR concludes that the petition should not be considered inadmissible under Article 47(b) and (c) of the Convention, or Article (a) and (b) of the Commission's Rules of Procedure.

### V. CONCLUSIONS

42. Having examined the present petition, the Commission concludes that it is competent to consider it. It finds that the petition is admissible with respect to petitioners' allegations of violations of Articles 5 (1), 8 (1) and 25 in connection with Article 1 (1) of the Convention. The Commission concludes likewise to inform the parties of this decision, and to proceed with its publication and inclusion in the Annual Report it will submit to the General Assembly of the OAS.

43. Based on the foregoing arguments of fact and of law set forth above, and without prejudging the merits of the matter

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible in respect of Articles 5 (1), 8 (1) and 25 in connection with Article 1 (1) of the American Convention.
2. To notify the petitioners and the State of the present decision
3. To proceed with the examination of the merits of the case
4. To publish this decision and include it in the Annual Report to be submitted to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights in Washington, D.C., on the 28th day of the month of February 2007. (Signed) Florentín Meléndez President; Paolo Carozza, First Vice President; Victor Abramovich Second Vice President; Commissioners: Clare K. Roberts, Freddy Gutiérrez, Evelio Fernández Arévalos and Paulo Sérgio Pinheiro.

[1] IACHR, Report N°129/01, Case 12.389, Haiti, paras. 11 and foll. IACHR, Report N°79/03, Case P139/02, Haiti, paras. 10; IACHR Report N°65/06, Case 12.566, Haiti, paras 23.

[2] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C, N°4, §135 and 136. Inter-American Commission on Human Rights, Report n°28/96, Case n°11.297, Juan Hernández (Guatemala), October 16, 1996, §43.

[3] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C, N°4, §138. Inter-American Commission on Human Rights, Report n°28/96, Case n°11.297, Juan Hernández (Guatemala), October 16, 1996, §45.

[4] See second paragraph of the Preamble of the American Convention

[5] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C, N°4, §138. Inter-American Commission on Human Rights, Report n°28/96, Case n°11.297, Juan Hernández (Guatemala), October 16, 1996, §45. See also Article 39, Commission Rules of Procedure, and Inter-American Court of Human Rights, Rules of Procedure, Art. 38(2) (providing that “In its answer, the respondent must state whether it accepts the facts and claims or whether it contradicts them, and the Court may consider accepted those facts that have not been expressly denied and the claims that have not been expressly contested”).

[6] See Code d’Instruction Criminelle, Loi du 29 juillet 1979, Titre II, Article 7.

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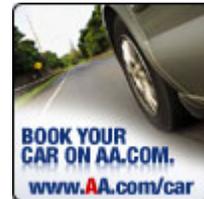
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Jean Viliena	Seat 24A	Economy		
American	1576	MIAMI INTERNTNL SUN 01JUN 3:15 PM	BOSTON 6:30 PM	N
Jean Viliena		Economy		Food For Purchase
American	1429	BOSTON SUN 08JUN 5:45 AM	MIAMI INTERNTNL 9:05 AM	N
Jean Viliena		Economy		Food For Purchase
American	936	MIAMI INTERNTNL SUN 08JUN 10:00 AM	PORT AU PRINCE 11:55 AM	N
Jean Viliena		Economy		

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Passenger	Ticket #	Fare-USD	Taxes and Carrier-Imposed Fees	Ticket Total
Jean Viliena	0012337444667	410.00	190.60	600.60
Visa XXXXXXXXXXXXX0989				<b>\$ 600.60</b>

### Baggage Information

Baggage charges for your itinerary will be governed by American Airlines BAG ALLOWANCE -PAPBOS-01 Piece/ American Airlines /UP TO 50 LB/23 KG AND UP TO 62 LINEAR IN/158 LINEAR CM BAG ALLOWANCE -BOSPAP-01 Piece/ American Airlines /UP TO 50 LB/23 KG AND UP TO 62 LINEAR IN/158 LINEAR CM 1STCHECKED BAG FEE-PAPBOS-USD0.00/ American Airlines /UP TO 50 LB/23 KG AND UP TO 62 LINEAR IN/158 LINEAR CM 1STCHECKED BAG FEE-BOSPAP-USD0.00/ American Airlines /UP TO 50 LB/23 KG AND UP TO 62 LINEAR IN/158 LINEAR CM 2NDCHECKED BAG FEE-PAPBOS-USD40.00/ American Airlines /UP TO 50 LB/23 KG AND UP TO 62 LINEAR IN/158 LINEAR CM\*\* 2NDCHECKED BAG FEE-BOSPAP-USD40.00/ American Airlines /UP TO 50 LB/23 KG AND UP TO 62 LINEAR IN/158 LINEAR CM\*\*\*BAG FEES APPLY AT EACH CHECK IN LOCATION ADDITIONAL ALLOWANCES AND/OR DISCOUNTS MAY APPLY

You have purchased a NON-REFUNDABLE fare. The itinerary must be canceled before the ticketed departure time of the first unused coupon or the ticket has no value. If the fare allows changes, a fee may be assessed for changes and restrictions may apply.

Electronic tickets are NOT TRANSFERABLE. Tickets with nonrestrictive fares are valid for one year from original date of issue. If you have questions regarding our refund policy, please visit [www.aa.com/refunds](http://www.aa.com/refunds).

To change your reservation, please call 1-800-433-7300 and refer to your record locator.

Check-in times will vary by departure location. In order to determine the time you need to check-in at the airport, please visit [www.aa.com/airportexpectations](http://www.aa.com/airportexpectations).

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You can obtain additional information on items 1 through 6 above at any U.S. location where the transporting air carrier's tickets are sold. You have the right to inspect the full text of each transporting air carrier's terms at its airport and city ticket offices. You also have the right, upon request, to receive (free of charge) the full text of the applicable terms incorporated by reference from each of the transporting air carriers. Information on ordering the full text of each air carrier's terms is available at any U.S. location where the air carrier's tickets are sold or you can click on the Conditions of Carriage button below.

If you have a customer service issue, please [Contact AA](#).

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[Conditions of Carriage](#)

[Special Assistance](#)

[Flight Check-in](#)

[Flight Status Notification](#)

NRID: 4827443115483012243871500

E-mail from CheapTickets Traveler Care to Jean Morose Viliena (Dec. 13, 2014, 2:47 AM) [Viliena Second Supp Production 000014-17]

Judith Ercolini

**From:** CheapTickets Traveler Care <travelercare@cheaptickets.com>  
**Sent:** Saturday, December 13, 2014 2:47 AM  
**To:** jmviliena20@gmail.com  
**Subject:** Flight Confirmation | Port Au Prince Sun, Dec 21, 2014



**This is your flight confirmation for Port Au Prince Sun, Dec 21, 2014. Please note the important locator codes.**

[Request a temporary CheapTickets password](#) so you can view your itinerary under My Trips.

You can always view your itinerary online for the most up-to-date information by visiting [My Trips](#).

[Request a temporary CheapTickets password](#) so you can view your itinerary under My Trips.

 Your promotion code for extra savings at select hotels will be coming in a separate e-mail within 48 hours.

CheapTickets booking number:  
**PBCTIX-359-940-9993**

US Airways Record locator:  
**FQD6F8**

American Airlines Record locator:  
**JSLIFQ**

 YOUR FLIGHT

**Outbound**

Depart 6:00 PM Sun, Dec 21  
Boston, Massachusetts  
Boston Logan Airport (BOS)

Stop 1 Washington DC, District of Columbia  
Reagan National Airport (DCA)

 US Airways 2125 Embraer 190  
406 mi 1hr 38min

Airline change. Time between flights: 1hr 22min

Depart 9:00 PM Sun, Dec 21  
Washington DC, District of Columbia  
Reagan National Airport (DCA)

Stop 2 Miami, Florida  
Miami Airport (MIA)

 American Airlines 1295 Boeing 737  
923 mi 2hr 37min

Airline change. Time between flights: 7hr 28min

Depart 7:05 AM Mon, Dec 22  
Miami, Florida  
Miami Airport (MIA)

Check-in online or at the airport with American Airlines.

Arrive 9:00 AM Port Au Prince  
Mais Gate (PAP)

 US Airways 381 Boeing 757  
714 mi 1hr 55min

Flight 381 Operated by AMERICAN AIRLINES

This is an overnight flight, which will arrive one (1) day later.

Security update: Airports and airlines now require that you obtain a boarding pass before entering the security checkpoint. Review the latest airport security rules.

Please note that this ticket will incur [change fees](#).

This booking is subject to our [Privacy Policy](#) and [Terms and Conditions](#).



### Traveler information

Traveler 1 JEAN VILIENA  
Airline Ticket Number: 0377543299112 **Electronic**  
Primary phone number: 7815269938  
Seat preference: Any Seat  
Meal (if available): Standard



### Trip cost

#### Flight

Airline Ticket(1) \$177.39

(Adult: 1)

**Total due at booking \$177.39**

[Taxes and fees included](#)

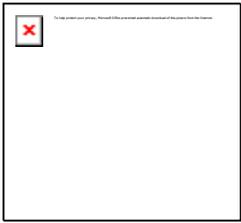
Additional [baggage fees](#) may apply.



This trip was billed to Visa ending in \*\*\*\*\*5123. [View billing info](#)

This reservation was made on Sat, Dec 13, 2014 1:39 AM CST .

### Add to your trip



#### Royal Oasis by Occidental



Nightly rates from ~~\$169~~ **\$135**

**3.9** / 5 Reviewer score

115, Rue Panamericane, Ville De Petion-Ville, Ouest, Port-au-Prince, 0  
**4.6 miles South** from the center of Port Au Prince



- **20% OFF**

- 

**Add hotel**



#### NH El Rancho Haiti



Nightly rates from ~~\$235~~ **\$165**

**3.3** / 5 Reviewer score

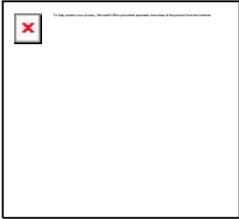
Rue Jose Marti, 5, Petionville, 6140  
**5.1 miles South** from the center of Port Au Prince



- **30% OFF**

- 

**Add hotel**



**BEST WESTERN PREMIER Petion-Ville**



Nightly rates from ~~\$169~~ **\$143**

**4.0** / 5 Reviewer score

50 Angle Louverture & Geffrard, Petion-Ville,  
5.0 miles South from the center of Port Au Prince



- **Save 15% on your stay**
- 

**Add hotel**

View your itinerary in My Trips for the most up-to-date information 

View more Port Au Prince hotels 

Add a rental car in Port Au Prince 

**Flight Status Updates**

The following alerts have been setup for this trip.  
**Jean Viliena**  
 jmviliena20@gmail.com  
 Receiving:Departure Alerts

**For flights departing early in the morning, you may receive trip notifications in the middle of the night.**

*add alerts for [6] more people*

[Manage alerts](#) | [Learn more](#)



\*\*Please do not respond directly to this e-mail. [Contact us here](#)

flexzoneContent.zone[ @id='stateSellerinformationFluid'].text

E-mail from Delta Air Lines to Jean Morose Viliena (May 28, 2013, 6:04 AM)  
[Viliena Second Supp Production 000054-55]

Judith Ercolini

**From:** Delta Air Lines <DeltaAirLines@e.delta.com>  
**Sent:** Tuesday, May 28, 2013 6:04 AM  
**To:** jmviliena20@gmail.com  
**Subject:** It's Time To Check-In

Your flight #867 is available for [check in](#).

[Delta.com](#) | [My Itinerary](#) | [Add to Address Book](#)

Jeanmorose Viliena

Your flight on Wednesday, May 29 is available for check in.

Delta Confirmation #GBSMOE

Dear Jeanmorose Viliena,

Save time and [check in online](#) whether you are traveling with or without baggage. Plus, you will also have access to purchase an [Economy Comfort™](#) seat, featuring three to four more inches of legroom and priority boarding. Check in now and see if an Economy Comfort seat is available on your flight. Or you may also choose to purchase a [Preferred Seat](#), including desirable window, aisle and exit row seats.

[Join SkyMiles](#) [Flight Status](#) [View Itinerary](#)

<b>Wednesday, May 29</b> <b>Flight Delta 867</b>	<b>Departs</b> 6:00 am Boston, Massachusetts <b>Arrives</b> 7:20 am Kennedy Intl, New York	
<b>Wednesday, May 29</b> <b>Flight Delta 699</b>	<b>Departs</b> 9:20 am Kennedy Intl, New York <b>Arrives</b> 1:16 pm Port Au Prince	

As you may know, we are investing \$1.4 billion at [John F. Kennedy International Airport \(JFK\)](#) to improve your New York travel, including renovating Terminal 4 (T4). Our JFK flights now depart from T4 or T2. Please [Check in](#) and confirm your terminal information now. Then, visit [Flight Status](#) or the [Fly Delta app](#) 2½ hours prior to your scheduled departure for up-to-date terminal and gate information.

Check out the [weather](#) in Kennedy Intl, New York. Remember to visit [delta.com](#) for all your travel needs - near and far.

Thank you for choosing Delta. We look forward to seeing you onboard tomorrow.

[Check In](#)

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Delta Blvd. P.O. Box 20706 Atlanta, GA 30320-6001



E-mail from Delta Air Lines to Jean Morose Viliena (Aug. 13, 2014, 10:42 PM)  
[Viliena Second Supp Production 000056-60]

**Judith Ercolini**

**From:** Delta Air Lines <DeltaAirLines@e.delta.com>  
**Sent:** Wednesday, August 13, 2014 10:42 PM  
**To:** jmviliena20@gmail.com  
**Subject:** JEAN M PORT AU PRINCE 25AUG14

Comment/Complaint ?

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## YOUR ITINERARY AND RECEIPT

**To access your boarding pass at the airport,** print email now and scan at a Delta self-service kiosk.

**Please review before your trip:**

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Make changes to eligible electronic tickets through My Trips at [delta.com](http://delta.com).

If you need to contact Delta for assistance please call 1-800-221-1212 or visit [delta.com/help](http://delta.com/help).

**Thanks for choosing Delta.**  
 Flight Confirmation #: **H6BUF9** | Ticket #: **00623668899884**

### Your Flight Information

Mon 25AUG				
LV 1:45pm	PORT AU PRINCE	AR 5:44pm	NYC-KENNEDY	DELTA 692 ECONOMY (M) Snack
LV 9:55pm	NYC-KENNEDY	AR 11:21pm	BOSTON	DELTA 2625 ECONOMY (M)

**Offset your Carbon Emissions**

We have partnered with The Nature Conservancy to allow you to offset your carbon emissions for this trip. Go to [delta.com/CO2](https://delta.com/CO2) to calculate your CO2 emissions and learn more about offsetting.

**Your Flight Details** [Manage Trip >](#)

Passenger Details	Flights	Seats
<b>JEAN MOROSE VILIENA</b> <a href="#">Add SkyMiles #</a> <a href="#">Join SkyMiles</a>	DELTA 692 DELTA 2625	14C 10D

\*\*\*Visit [delta.com](https://delta.com) or use the Fly Delta app to view, select or change your seat  
 If you purchased an Economy Comfort seat or a Trip Extra, please visit [My Trips](#) to access a receipt of your purchase.

**Receipt Information**

**Billing Details**

<b>Passenger:</b>	<b>Payment Method:</b>	<b>Ticket Number:</b>
JEAN MOROSE VILIENA	CA*****0014	00623668899884
<b>FARE:</b>	<b>390.00 USD</b>	
<b>Taxes/Carrier-imposed Fees:</b>	<b>145.70</b>	
<b>Ticket Amount:</b>	<b>535.70 USD</b>	

REF WITH FEE/CHG FEE APPLIES

This ticket is non-refundable unless issued at a fully refundable fare. Some fares may not allow changes. If allowed, any change to your itinerary may require payment of a change fee and increased fare. Failure to appear for any flight without notice to Delta will result in cancellation of your remaining reservation.

Note: When using certain vouchers to purchase tickets, remaining credits may not be refunded. Additional charges and/or credits may apply and are displayed in the sections below.

**Details - Taxes/Carrier-imposed Fees**

<b>Total:</b>	<b>145.70</b>
<b>Itemized:</b>	55.00 AB 5.50 DH 5.00 FP 39.00 HT .60 KO 5.60 AY 5.00 XA 7.00 XY 5.50 YC 17.50 US

**Fare Details**

PAP DL X/NYC DL BOS390.00MNN00ARZ NUC390.00END ROE1.00

**Ticketing Details**

<b>Passenger:</b>	<b>Ticket #:</b>	<b>Place of Issue:</b>	<b>Issue Date:</b>	<b>Expiration Date:</b>
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JEAN MOROSE VILIENA 00623668899884 PAPWEB 13AUG14 13AUG15

✖

✖

**Baggage Fees**

✖ Thank you for being a valued customer. The fees below are based on your original ticket purchase information. If you qualify for free or discounted checked baggage, this will be taken into account when you check in.

✖

Airline Rule Applied	Origin	Destination	Baggage	Tax	Total
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Mon 25 Aug 2014 ✖

<b>DELTA</b>	<b>PAP</b>	<b>JFK</b>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">FREE<sup>1</sup></td> <td style="width: 33%; text-align: center;">FREE</td> <td style="width: 33%;"></td> </tr> <tr> <td style="border: 1px solid black; height: 20px;"></td> <td style="border: 1px solid black; height: 20px;"></td> <td style="border: 1px solid black; height: 20px; text-align: center;">1779</td> </tr> <tr> <td style="text-align: center;">CARRY ON</td> <td style="text-align: center;">FIRST</td> <td style="text-align: center;">SECOND</td> </tr> </table>	FREE <sup>1</sup>	FREE				1779	CARRY ON	FIRST	SECOND	<b>0</b>	<b>1779</b>
FREE <sup>1</sup>	FREE													
		1779												
CARRY ON	FIRST	SECOND												

<b>DELTA</b>	<b>JFK</b>	<b>BOS</b>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">FREE<sup>1</sup></td> <td style="width: 33%; text-align: center;">FREE</td> <td style="width: 33%; text-align: center;">FREE</td> </tr> <tr> <td style="border: 1px solid black; height: 20px;"></td> <td style="border: 1px solid black; height: 20px;"></td> <td style="border: 1px solid black; height: 20px;"></td> </tr> <tr> <td style="text-align: center;">CARRY ON</td> <td style="text-align: center;">FIRST</td> <td style="text-align: center;">SECOND</td> </tr> </table>	FREE <sup>1</sup>	FREE	FREE				CARRY ON	FIRST	SECOND	<b>0</b>	<b>0</b>
FREE <sup>1</sup>	FREE	FREE												
CARRY ON	FIRST	SECOND												

Visit [delta.com](http://delta.com) for details on [baggage embargos](#) that may apply to your itinerary. **1779**

1: On Delta-operated flights, you may carry on one bag and a small personal item free of charge. Carry-on allowances may differ and fees may apply for flights operated by carriers other than Delta. Contact the operating carrier for detailed carry-on limitations and charges.

BusinessElite/First/Business Class weight allowance reverts to 50 lbs for all checked bags beyond the regular free allowance. Travelers to/from Key West, Florida are limited to one checked bag.

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At the time of check in with Delta for Delta-marketed and Delta-operated flight(s) (including Delta connection), Basic Cardmembers with a Gold, Platinum, or Reserve Delta SkyMiles Credit Card from American Express are eligible for the first bag fee waiver. Waiver is only for normal bag fee, if any, for the first checked bag that is not overweight or oversize under Delta's applicable rules as set forth in Delta's contract of carriage. See [delta.com/firstbagfree](http://delta.com/firstbagfree) for more details.

A standard checked bag with Delta may be up to 50 lbs and 62 linear inches (per piece). Additional fees apply for oversize, overweight, and/or additional pieces of checked baggage. Please review Delta's baggage guidelines for details. Weight and size restrictions may vary when checking baggage on carriers other than Delta. Contract the operating carrier for detailed checked baggage allowances. You must be checked in at the gate by the applicable check-in deadlines or your reservation may be cancelled. Please review Delta's check-in requirement guidelines for details. Check-in requirements vary by airline, so if your ticket includes travel on other airlines, please check with the operating carrier on your ticket.

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Delta 1-800-221-1212 | Air France 1-800-237-2747 | Alitalia 1-800-223-5730 | KLM 1-800-618-0104

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- Our right to [change terms](#) of the contract.
- [Check-in requirements](#) and other rules established when we may [refuse carriage](#).
- Our rights and limits of our liability for [delay of failure to perform service](#), including schedule change, substitution of alternative air carriers or aircraft, and rerouting.
- Our policy on [overbooking flights](#), and your rights if we deny you boarding due to an oversold flight.

These terms are incorporated by reference into our contract with you. You may view these [conditions of carriage](#) on [delta.com](#), or by requesting a copy from Delta.

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E-mail from Ralph Theano to Jean Morose Viliena (Aug. 19, 2012, 12:40 AM)  
[Viliena Second Supp Production 000078-79]

**Judith Ercolini**

**From:** rrrtheano@yahoo.com  
**Sent:** Saturday, August 18, 2012 8:41 PM  
**To:** Jean Morose Viliena  
**Subject:** Re: Fwd: J. VILIENA 08/20/12 Itinerary

Ok  
 Sent from my BlackBerry® device from Digicel

**From:** Jean Morose Viliena <jmviliena20@gmail.com>  
**Date:** Sat, 18 Aug 2012 20:14:04 -0400  
**To:** Ralph Theano<rrrtheano@yahoo.com>  
**Subject:** Fwd: J. VILIENA 08/20/12 Itinerary

Begin forwarded message:

**From:** [americanairlines@aa.com](mailto:americanairlines@aa.com)  
**Date:** August 15, 2012 3:12:08 PM EDT  
**To:** [jmviliena20@gmail.com](mailto:jmviliena20@gmail.com)  
**Subject:** J. VILIENA 08/20/12 Itinerary



**Record Locator:** LCJJTB  
**Status:** Purchased - Aug 15, 2012

**Your Itinerary**

Carrier	Flight Number	Departing		Arriving		Booking Code	Meals
		City	Date & Time	City	Time		
AMERICAN AIRLINES	801	BOS Boston	Aug 20, 2012 06:40 AM	MIA Miami	Aug 20, 2012 09:55 AM	V	Food for Purchase
AMERICAN AIRLINES	809	MIA Miami	Aug 20, 2012 12:05 PM	PAP Port Au Prince	Aug 20, 2012 02:10 PM	V	N/A

**Traveler Information**

Passenger	Cabin Class	Seat Assignment
JEAN VILIENA	Economy	
JEAN VILIENA	Economy	

Reservation

Traveling passengers may check in and obtain boarding passes for U.S. domestic electronic tickets within 24 hours of the flight time online at [AA.com](http://AA.com) by using [www.aa.com/checkin](http://www.aa.com/checkin) or at a Self-Service Check-In machine at the airport. Check-in options may be found at [www.aa.com/options](http://www.aa.com/options). For information regarding American Airlines checked baggage policies, please visit [www.aa.com/baggageinfo](http://www.aa.com/baggageinfo).

Travelers must present a government-issue photo ID with either a boarding pass or a priority verification card at the security screening checkpoint

Please remember flight details are subject to change. In order to check a flight's status, gate, or departure and arrival time, go to [www.aa.com](http://www.aa.com) and enter the flight information in the Gates and Times search area. In order to receive automatic notifications of flight changes, click on the Flight Status Notifications section on the [www.aa.com](http://www.aa.com) homepage and enter the required flight and contact information.

[Privacy Policy](#)

E-mail from Jean Morose Viliena to Peter Haley (Jan. 19, 2021, 5:50 PM) [Viliena  
Second Supp Production 000041-47]

**Judith Ercolini**

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**From:** Jean Morose Viliena <jmviliena20@gmail.com>  
**Sent:** Tuesday, January 19, 2021 5:50 PM  
**To:** Peter Haley  
**Subject:** Fwd: Senateur  
**Attachments:** Lettre ouverte du maire principal de la commune des Irois.docx

----- Forwarded message -----

From: **Jean Morose Viliena** <[jmviliena20@gmail.com](mailto:jmviliena20@gmail.com)>  
Date: Sat, Mar 12, 2011 at 10:01 PM  
Subject: Senateur  
To: <[maximeroumer@yahoo.fr](mailto:maximeroumer@yahoo.fr)>



Lettre ouverte du maire principal de la commune des Irois, Mr Jean Morose Viliéna.

A toutes les autorités concernées.

Mesdames, Messieurs,

Actuellement aux États-Unis où je vis depuis plus de douze mois, je m'empresse à vous expliquer les raisons de mes séjours prolongés en dehors de ma commune les Irois, dont je suis le maire principal.

En effet, la corruption et la violation flagrante de la constitution haïtienne qui caractérise la priorité de certains parlementaires et les membres de l'appareil judiciaire haïtien m'a empêché d'exécuter mes préoccupations en tant que le premier citoyen de la ville des Irois, ont jalonné la commune dans une germe de division presque sans fin, sont les facteurs de ce déplacement.

Mesdames, Messieurs,

Pour illustrer ce que je me disais, J'ai l'honneur de porter à votre connaissance certains faits perpétrés par l'ex-député Orélien Joachin dans la commune des Irois.

1-L'ex-député Orélien Joachin (**alias TIBLANC**) a reçu du gouvernement haïtien pour exécuter des projets, la somme **quinze millions huit cent mille gourdes (15,800,000.00)** réparties comme suit:

a-**Deux millions deux cent milles (2,200,000.00)** valeurs destinées à la construction d'un marché publique aux Irois la construction d'une bibliothèque.

b-**trois millions de gourdes (3, 000,000.00)** valeurs destinées à la construction d'un marché publique à galette potinier (3e section commune les Irois).

c-**Un million gourde(1,000,000.00)** sommes versées au curage d'une petite rivière à Carcasse(1e section commune les Irois).

e-**Un million deux cent mille de gourdes(1,200,000.00)** destinées à un projet de conservation de sol.

f-**Huit million quatre cent mille gourdes(8,400,000.00)** valeurs allouées au bétonnage de la ville des Irois, la construction d'un dispensaire à Carcasse, et l'installation des lampadaires aux Irois (energie solaire).

Tous ces montants précités sont détournés au profit des intérêts personnels du député Joachim (alias TIBLANC). Aucun de ses projets ne sont pas réalisés; pour ne pas trop exagérer, je vous suggère de faire une courte visite dans cette circonscription pour voir comment nos recettes fiscales sont dilapidés. Devant une pareille acte, la population Iroisienne qui se voit patauger dans la misère et dans la boue dégageait une grande frustration. Comme maire de la commune des Irois, il est de mon devoir de dénoncer ces actes de malversations. En conséquences, manipulé par Mr Paul Denis qui était conseillé du président Préval, j'étais arrêté par le juge d'instruction France Drice avec ses propres mains et m'avais conduit à Jérémie.

3-Dans la nuit du 29 au 30 Novembre suite au décès du sieur Haute Fort Bajan, que certains avaient estimé qu'il avait été victime d'un acte de sorcellerie. En réaction, des individus mal intentions non-identifies avaient fait éruption dans la ville, ils avaient vandalisé et brulé plusieurs maisons. Malheureusement jetais en mission à l'extérieur de la commune; ni les autorités judiciaires et policières des Irois n'avaient rien fait pour éviter cette vague de violences. Cette situation allait Profiter par les assoiffés du pouvoir pour faire main mise sur la commune des Irois pendant la période pré-électorale. Depuis lors, un grand mouvement de représailles pré-électoral aveugles ont été lancé contre ma personne, ma famille, et mes partisans par le ministre de la justice Paul Denis pour empêcher mon retour aux Irois afin de permettre à son poulain l'ex-député Orélien Joachin de remporter les élections du 28 Novembre. C'était ainsi que, l'ex-commissaire du gouvernement de Jérémie Arycidas Auguste, s'était rendu aux Irois, après qu'il avait rencontré l'ex- député Orélien Joachin et ses partisans, il s'est procédé à

l'arrestation de mon père Lissage Viliéna, âgé de 69 ans, mon oncle Pierre Viliéna, et mon cousin Marc-Athyr compte, pendant qu'ils ont tous assis devant leurs maisons. Ensuite, l'ex-député Orélien Joachim a mis sur pied une brigade composé de: William Lebon, un assoiffé du pouvoir, candidat cinq fois dans la commune des Irois sans jamais élu, Osséphita Lebon, et son mari Gérald Charles juge de paix des Irois, Rodarnemark Lebon, Dosthone Lebon, Prénol François, Raymond Jn Noel, Andrémark Vilsaint qui avait occasionné le départ des sœurs religieuses aux Irois après avoir implanté plusieurs aiguilles sur la chaise de l'une des sœurs, Denner Laguerre, Louimarc Milfort, Vilfrand Larrieux, Josy Izemé, Juders Izemé, Nissage Mathur, Meprilio François, Boniface Eclesiaste, Gilbert Jean Pierre, Gaspard, Sainsary Mardy, Sonia Jn Pierre, Frankel Izemé, Wendy Dorléand un policier affecté au commissariat des Irois, armés de piques, machettes, fusils et revolvers. Ils ont arrêté, brutalisé des dizaines de mes partisans. Parmi eux, une dame a été violé, deux personnes ont blessé par balle, tirée par le policier Wendy Dorléand, il s'agit de : Emmanuel compte, un jeune garçon en classe de Rhéto au lycée St Martin De Porrès des Irois, et Mme Alestine Fleurimé âgée de 80 année pendant que son fils est en prison à Jérémie, leurs maisons ont été pillées et sagagées. Devant cette panique, des milliers des Iroisiens, Iroisiennes ont laissé leurs maisons, leurs enfants pour se réfugier dans les bras, à Tiburon, aux Cayes, ou à Port-au-Prince. Et certains d'entre eux ont même péri dans le terrible tremblement de terre du 12 Janvier.

En effet, pour tenir la pression à la veille des élections du 28 Novembre 2010 de façon à empêcher la population Iroisienne a exprimé son droit de vote contre ceux qui la tiennent dans la misère, contre les superbes corrupteurs, contre l'injustice ; un jugement fomenté, bafoué, illogique sous l'obédience du Doyen du tribunal de première instance de Jérémie Me Yvon Amoux a condamné des fils Iroisiens, parmi eux mon père, à 9 ans de travaux forcés et six cent cinquante mille gourde chacun. De plus, pour me tenir à l'extérieur du pays, il a voulu même entamer un procès par coutumes contre ma personne. Par conséquent, mon cabinet d'avocat a décidé de porter l'affaire par devant la cour de cassation pour anéantir le pouvoir arbitraire de Me Yvon Amoux.

Pourtant, malgré l'implication de l'ancien parlementaire Orelie Joachim dans l'assassinat de son agent de sécurité, Marcéna Pheto, après avoir abattu chez le Député, son éruption au sein du Tribunal de Paix de l'Anse d'Hainault pour libérer un détenu nommé Louis Exel, malgré beaucoup de ses partisans aux Irois tels que : Kesnel Antoine, Gaspard Izemé, Jozy Izemé, Juders Izemé, Frankel Izemé, Nissage Mathyr, Prénol François, etc. ont fait l'objet des mandats d'arrêt, il circulaient sans aucune crainte.

Ainsi, compte tenu des persécutions politiques, des divers menaces exercées par le député Orelie Joachim et ses partisans contre ma personne, compte tenu la position du Ministre de la justice Paul Denis, le grand supporteur du député Orélie, dans la période pré-électorale. N'ayant plus confiance dans l'appareil judiciaire, je me suis obligé de rester à l'extérieur du pays.

Je m'adresse à vous les autorités haïtienne, la population Iroisienne est-il responsable de ce traitement arbitraire, absurde et abusif que vous la faites subir. Quand vous allez reconnaître que vous êtes la source des situations de violences et d'insécurité infernale que connaissent notre pays à cause des malversations dans les institutions de l'Etat pendant que le peuple se voit nager dans la boue ?

Les institutions des Droits de l'Homme, les médias, vous représentez la force sur qui le peuple haïtien peut compter pour l'aider à sortir dans cette marasme. Prenez le temps à étudier les dossiers pour ne faire l'avocat du diable.

Le nouveau gouvernement qui sera élu, quel sera votre préoccupation à l'endroit des parlementaires qui ont en leur possession des centaines de millions de gourdes et qui n'ont rien fait dans les communes. Bien entendu plusieurs d'entre eux auront la chance d'être réélus ?

En conclusion, je requiers, aux institutions des Droits de l'Homme, des médias, et toutes les autorités concernées, vos interventions immédiates pour permettre :

- 1-La libération des dizaines de paisibles citoyens coupables, semble-t-il, de s'être à mes côtés aux dernières élections municipales, victimes de règlements de compte orchestrés par les mauvais perdants des élections de 2006, et pour avoir empêché le député Orélie Joachim de servir avec les fonds de la commune des

Irois à ses intérêts personnels, que les autorités de Justice de Jérémie maintiennent encore dans leurs geôles infectes, appréhendés sans cause ni motif.

2-Aux Iroisiens, Iroisiennes, chassés par le député Orélien Joachim et ses partisans de regagner leurs maisons.

Morose Viliéna

Jean

commune des Irois.

Maire de la



E-mail from Jean Morose Viliena to twidy509@yahoo.com (Jan. 1, 2014, 11:04 AM) [Viliena Second Supp Production 000035-38]

**Judith Ercolini**

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**From:** Jean Morose Viliena <jmviliena20@gmail.com>  
**Sent:** Wednesday, January 1, 2014 11:04 AM  
**To:** twidy509@yahoo.com  
**Subject:** Fwd: E-Ticket Confirmation-EQONKY 08JAN

Sent from my iPhone

Begin forwarded message:

**From:** "American [Airlines@aa.com](mailto:Airlines@aa.com)" <[notify@aa.globalnotifications.com](mailto:notify@aa.globalnotifications.com)>  
**Date:** December 25, 2013 at 11:06:46 AM EST  
**To:** "[JMVILIENA20@GMAIL.COM](mailto:JMVILIENA20@GMAIL.COM)" <[JMVILIENA20@GMAIL.COM](mailto:JMVILIENA20@GMAIL.COM)>  
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## Itinerary

Carrier	Flight #	Departing	Arriving	Fare Code
 American	1429	BOSTON WED 08JAN 5:30 AM	MIAMI INTERNTNL 9:00 AM	V
Jean Viliena		Economy		Food For Purchase
 American	1665	MIAMI INTERNTNL WED 08JAN 11:55 AM	PORT AU PRINCE 1:55 PM	V
Jean Viliena		Economy		

## Receipt

Passenger	Ticket #	Fare-USD	Taxes and Carrier-Imposed Fees	Ticket Total
 Jean Viliena	0012385386891	210.00	41.20	251.20
 Visa XXXXXXXXXXXXX0968				<b>\$ 251.20</b>

You have purchased a NON-REFUNDABLE fare. The itinerary must be canceled before the ticketed departure time of the first unused coupon or the ticket has no value. If the fare allows changes, a fee may be assessed for changes and restrictions may apply.

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# **Killing with Impunity:** **State-Sanctioned Massacres in Haiti**

Harvard Law School International Human Rights Clinic  
Observatoire Haïtien des crimes contre l'humanité



INTERNATIONAL HUMAN RIGHTS CLINIC  
HUMAN RIGHTS PROGRAM AT HARVARD LAW SCHOOL



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**Killing with Impunity:**  
State-Sanctioned Massacres in Haiti

Harvard Law School International Human Rights Clinic  
Observatoire Haïtien des crimes contre l'humanité

April 2021





## Executive Summary

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### A Pattern of Sustained Attacks

Over the course of President Jovenel Moïse's presidency, Haitian civil society has raised alarm that armed gangs are carrying out heinous, state-sanctioned attacks against civilians in impoverished neighborhoods in Port-au-Prince. The scale, pattern, and context of the attacks indicate that they may amount to crimes against humanity.

The attacks have taken place in the context of an escalating political crisis. President Moïse's rule has become increasingly authoritarian and has turned to repression to quell dissent. Since 2018, massive public protests calling for government accountability and Moïse's resignation have periodically shut down the country.<sup>1</sup> The government has responded to the protests with aggressive measures, including criminalizing common non-violent protest tactics and increasing illegal surveillance of opponents.<sup>2</sup> Targeted assassinations and threats against government critics have been carried out with impunity.<sup>3</sup>

During the four years of Moïse's presidency, human rights observers have documented at least ten brutal attacks in impoverished parts of the capital where opposition against his administration runs strong.<sup>4</sup> Three attacks—in La Saline, Bel-Air, and Cité Soleil—are particularly well-documented and severe.<sup>5</sup> These three attacks offer insights into the means and methods used to carry out the assaults, and the ways in which state actors have supported the orchestration and execution of the attacks. When viewed together, they reveal a pattern of state-sanctioned violence, human rights abuses, and refusal to hold perpetrators accountable that likely amounts to crimes against humanity.

**La Saline:** In November 2018, the worst massacre in decades was carried out in La Saline, a neighborhood that was playing a leading role in organizing protests against the President.<sup>6</sup> In the weeks before the attack, two senior officials from Moïse's administration, Pierre Richard Duplan and Fednel Monchéry, met with then-police officer and gang leader Jimmy Chérizier *alias* Barbecue to plan and provide resources for the attack.<sup>7</sup> On November 13-14, 2018, armed gangs led by Chérizier carried out a vicious attack on the community. Over the course of fourteen hours, the assailants systematically extracted victims, including children, from their homes and executed them at gunpoint and with machetes.<sup>8</sup> Bodies were burned, dismembered, and disposed of in trash piles.<sup>9</sup> At least 71 people were killed, 11 women were raped, and 150 homes were looted and destroyed.<sup>10</sup> Despite widespread outrage in Haiti and internationally, President Moïse has failed to condemn his subordinates' role in the massacre or support their prosecutions.<sup>11</sup>

**Bel-Air:** In September 2019, as popular protests escalated into a nationwide shutdown, demonstrators placed flaming barricades on the main roads of Bel-Air, another opposition stronghold.<sup>12</sup> After several failed attempts to remove the barriers, an official from the Moïse administration reportedly hired Chérizier to secure the removal of the barriers and prevent further protests in Bel-Air.<sup>13</sup> Over the course of three days from November 4-6, 2019, Chérizier and allied gang leaders carried out an armed attack on Bel-Air. The assailants shot civilians and set fire to homes, killing at least 24 people.<sup>14</sup> Eyewitnesses identified three police officers in civilian clothes among the attackers.<sup>15</sup> Although the attack took place in an area surrounded by police stations, the police failed to intervene to protect residents despite repeated pleas for help broadcasted over the radio and social media.<sup>16</sup>

**Cité Soleil:** Between May and July 2020, Chérizier and allied gang leaders—now operating under the newly formed G9 alliance<sup>17</sup>—coordinated simultaneous attacks across several neighborhoods in Cité Soleil. They killed at least 145 civilians, raped multiple women, and burnt homes in efforts to claim areas held by rivals with ties to Moïse’s political opponents.<sup>18</sup> Police resources were reportedly utilized at numerous points in the attacks.<sup>19</sup> Like La Saline and Bel-Air, Cité Soleil is known as an opposition stronghold.<sup>20</sup> The area is also strategically important for electoral purposes, with many polling stations located there.<sup>21</sup> Residents believe they were targeted for their political affiliations, in an effort to secure electoral support for the president and his party.<sup>22</sup>

To date, the Haitian government has failed to hold perpetrators accountable, allowing them to act with near complete impunity. Known perpetrators such as Chérizier, who is implicated as a principal actor in repeated attacks, remain free.<sup>23</sup> Moreover, the government has failed to reckon with the criminal responsibility of officials and police officers within its ranks.<sup>24</sup> Duplan and Monchéry remained in office for almost a year after the 2018 La Saline attack,<sup>25</sup> and prosecutions have failed to progress.<sup>26</sup> Police officers implicated in the attacks have not been brought to justice.<sup>27</sup> Despite indications that Moïse himself has sanctioned the attacks,<sup>28</sup> his role remains unscrutinized by any official investigation. This lack of justice has allowed a culture of impunity to grow, emboldening criminals and leaving civilians vulnerable to politically-motivated violence.<sup>29</sup>

In the absence of an official response, Haitian human rights organizations have been at the forefront of responding to the attacks, including being the first to investigate the attacks in their aftermath and publishing detailed reports of their findings.<sup>30</sup> Significant facts surrounding the attacks are now well-documented. This report builds on that critical work to analyze the attacks under international criminal law.

## Legal Framework

Relying on publicly available information, this report synthesizes what is currently known about the attacks in La Saline, Bel-Air, and Cité Soleil and applies international criminal law to analyze whether they amount to crimes against humanity. The three attacks were selected for analysis because of a combination of their severity and the existence of detailed documentation of facts surrounding the attacks.

The report uses the definition of crimes against humanity as contained in the Rome Statute, the international treaty that established the International Criminal Court (ICC), as well as related international jurisprudence from the ICC and other international criminal tribunals. The Rome Statute contains the most recent and widely accepted definition of the crime under international law.<sup>31</sup>

Under Article 7 of the Rome Statute, certain crimes may constitute crimes against humanity when they are committed as part of a widespread or systematic attack against a civilian population and are carried out pursuant to a state or organizational policy.<sup>32</sup> Using this framework, the report assesses whether there is a reasonable basis to conclude that the attacks amount to crimes against humanity.

Determining whether an attack constitutes crimes against humanity entails analyzing the violent acts to assess the scale, pattern, and context in which they took place. It also allows for a broader examination of individual criminal responsibility. Under international criminal law, liability for crimes against humanity is not limited to the persons who carried out the criminal acts, but also includes those who solicited, oversaw, and aided and abetted the crimes, as well as those who failed in their duties to punish the crimes after the fact. Given the compelling evidence that state actors—including

President Moïse himself and others in his administration—are implicated in the attacks, such an inquiry provides a fuller picture of the actors who may be held responsible for the attacks and who have allowed the attacks to be carried out with impunity.

## Findings

This report finds that there is a reasonable basis to conclude that both state and non-state actors may have committed crimes against humanity in Haiti. The attacks analyzed here involve murder, rape, torture, and persecution of a group based on their political identity—the types of underlying crimes that form a foundation for crimes against humanity.<sup>33</sup> The scale, pattern, and intensity of violence indicate that the acts were neither isolated nor random, but rather constitute both widespread and systematic attacks targeted at civilians. Furthermore, evidence suggests that the attacks were pre-planned and furthered both an organizational policy of the gangs and an implicit state policy to repress political opposition. This state policy can be gleaned from the consistent targeting of opposition neighborhoods and the repeated involvement of government officials, police officers, and police resources in the attacks. Moreover, state actors allowed the attacks to be carried out without police intervention and have since failed to punish those responsible.

Under Article 7 of the Rome Statute, qualifying underlying crimes may constitute crimes against humanity when they are committed as part of a widespread or systematic attack against a civilian population that is carried out pursuant to a state or organizational policy.

Based on what is currently known about the attacks, it is likely that further investigations could establish individual criminal responsibility for gang members and leaders, as well as government officials, including police officers and high-level Moïse administration officials who were involved in the attacks. As much of the international attention on the attacks has focused on the role of gangs,<sup>34</sup> this report instead focuses on the lesser-examined role of state actors who either actively provided material support to perpetrators or supported the perpetrators passively by failing in duties to prevent or punish them. The report identifies key legal theories under which state actors may be responsible for crimes against humanity: direct commission; aiding and abetting; ordering, soliciting, or inducing the crimes; and common enterprise. Under the doctrine of command responsibility, President Moïse himself may also be liable for the crimes committed by his subordinates, particularly with respect to the attack in La Saline.

The findings that crimes against humanity have likely taken place in Haiti, and that state actors may be liable for the crimes, have important ramifications for accountability. Haiti is a party to the American Convention on Human Rights, which under Haiti's Constitution becomes part of domestic law.<sup>35</sup> Haiti has also accepted the binding jurisdiction of the Inter-American Court of Human Rights, tasked with interpreting the American Convention. The Court has not only endorsed universal application of crimes against humanity,<sup>36</sup> but has also held that no statute of limitations applies to such crimes.<sup>37</sup> The Haitian government therefore has a duty to investigate and punish those who are responsible for crimes against humanity.<sup>38</sup> A finding of crimes against humanity also opens the door for other countries to prosecute perpetrators found outside of Haiti on the basis of universal jurisdiction.<sup>39</sup> Finally, although Haiti is not a party to the ICC, the situation could be referred to the ICC by the UN Security Council.<sup>40</sup>

It is crucial that the Haitian government and others fulfill their duty to hold perpetrators responsible for these crimes, in line with the recommendations set forth at the end of this report. Accountability is critical to supporting rule of law, but also to ensuring an end to the grave human rights abuses that have placed Haitian communities in a state of terror.

Inst. for Just. & Democracy in Haiti, Demande D'extension des Mesures  
Préventives Contre La République D'Haïti Au Nom Des Défenseurs  
Haïtiens des Droits de l'homme David Boniface, Nissage Martyr, et Juders  
Ysemé et tous les autres dans des situations similaires (July 16, 2017)  
[Plaintiffs\_0000546-51]

**DEMANDE D'EXTENSION DES MESURES PREVENTIVES  
CONTRE LA REPUBLIQUE D'HAÏTI  
AU NOM DES DEFENSEURS HAÏTIENS DES DROITS DE L'HOMME  
DAVID BONIFACE, NISSAGE MARTYR, ET JUDERS YSEME ET TOUS LES AUTRES DANS DES  
SITUATIONS SIMILAIRES**

**DÉPOSÉ PAR :**

INSTITUTE FOR JUSTICE & DEMOCRACY IN HAÏTI

LE 16 JUILLET 2017

## I. RÉSUMÉ

1. L'*Institute for Justice & Democracy in Haiti* (IJDH) demande respectueusement que la Commission Interaméricaine des Droits Humains (CIDH) accorde une extension et modifie les mesures préventives conformément à la résolution 26/2015 du 28 juillet 2015 et selon l'article 25, sous-sections 9, 10 et 12, de Règlement de la Commission Interaméricaine des Droits Humains. L'IJDH présente cette demande au nom des requérants/défenseurs des droits de l'homme haïtiens : David Boniface, Juders Ysemé, Nissandère Martyr (le fils du requérant/défenseur décédé Nissage Martyr qui a mort le 24 mars 2017), les membres de leurs familles immédiates, et les autres dans des situations similaires<sup>1</sup> (ci-après « Requérants »).

2. Depuis la résolution 26/2015 de la CIDH, le père du Requièrent Juders Ysemé a tiré dans le pied par des hommes qui travaillaient pour le Magistrat, Jean Morose Viliena, qui a été responsable pour les crimes violents qu'a mérité la résolution de la CIDH en 2015. En Mars 2017, l'un des Requièrent, Nissage Martyr est mort mystérieusement le lendemain après qu'il a porté plainte contre Jean Morose Viliena aux Etats-Unis pour violation des crimes contre humanité.

3. La vie des Requérants et leur famille sont toujours en danger en Haïti à cause de leur travaille comme défenseurs des droits humains. Ils demandent de protection du Gouvernement d'Haïti. Ils demandent que la CIDH révise la mise en œuvre par le Gouvernement Haïtien des mesures de protection et exhorte les autorités à faire le nécessaire pour qu'ils bénéficient des mesures de protection et à assurer sans délai la protection efficace de David Boniface, de Juders Ysemé et de leurs familles, et la famille de Nissage Martyr, dans le respect de leurs souhaits. Ces efforts du gouvernement devraient inclure une explication de tous efforts le gouvernement a pris et prendra pour mise en œuvre des mesures avec un calendrier d'implémentation.

4. Les Coordonnées des représentants juridiques sont les suivantes :

**Institute for Justice & Democracy in Haiti (IJDH)**

Nicole Phillips, Esq.

15 Newbury Street

Boston, MA 02116 United States

Phone (U.S.) : +1 510 715 2855

Phone (Haïti) : +509 4645 2888

Email : [nicole@ijdh.org](mailto:nicole@ijdh.org)

## II. MISE À JOUR

5. Dans sa résolution 26/2015 du 28 juillet 2015, la CIDH a demandé à l'État Haïtien : (a) d'adopter les mesures nécessaires afin de protéger la vie et l'intégrité personnelle des Requérants ; (b) d'adopter les mesures nécessaires afin que les bénéficiaires puissent exercer

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<sup>1</sup> Les personnes dans des situations similaires sont celles qui habitent aux Irois qui ont été menacées ou attaquées par Jean Morose Viliena et la milice KOREGA, aussi bien que celles qui ont une grande possibilité d'être menacées ou attaquées par Viliena et la milice KOREGA à cause du prochain procès pénal.

leurs activités en tant que défenseurs des droits humains sans faire l'objet d'actes de violence ou de harcèlement ; (c) de fixer les mesures à adopter avec les bénéficiaires et leurs représentants ; (d) de faire part des actions adoptées afin d'enquêter sur les faits allégués ayant donné lieu à l'approbation de la demande de mesure conservatoire et, ainsi, d'éviter qu'ils ne se reproduisent.

6. Le gouvernement Haïtien n'a pas pris les mesures nécessaires pour protéger la vie et l'intégrité personnelle des Requérants. En fait, il semble que l'État n'a rien fait. Aucun Requérant ni leur avocat a été contacté par le gouvernement sur la résolution de la CIDH.

#### ***L'attaque contre le père de Juders Ysemé***

7. En Octobre 2015, Merse Ysemé, le père de Requérant Juders Ysemé, était assis paisiblement devant sa maison sur la véranda quand une équipe d'homme lui a tiré dessus dans le pied. Merse Ysemé a reconnu deux des hommes qui travaillent pour Jean Morose Viliena : Meritus Beublanc et Agnel Jean. Meritus Beublanc était l'ancien gardien de sécurité de Magistrat Jean Morose Viliena. Il était l'un des personnes responsable de meurtre d'Eclesiaste Boniface en 2007. Agnel Jean a retenu Juders lorsqu'il a été battu par les hommes de Jean Morose Viliena en 2008.

8. Merse Ysemé a dû aller à l'hôpital. Jusqu'aujourd'hui, il a toujours du mal à marcher à cause de balle. Selon Juders, les hommes de Viliena le cherchaient lui, mais faute de le trouver, ils ont tiré sur son père. Effectivement, l'attaque a envoyé le message à Juders Ysemé, David Boniface et leur famille qu'ils sont toujours en danger. Le père a porté plainte à la police mais rien n'a été fait pour investiguer la situation ou pour punir les coupables.

#### ***La mort mystérieuse de requérant Nissage Martyr***

9. Le 22 mars 2017, Nissage Martyr, David Boniface et Juders Ysemé ont déposé une [plainte civile](#) contre Viliena en U.S. District Court pour le District du Massachusetts pour les allégations de torture, exécutions extrajudiciaires et tentative d'assassinat extrajudiciaire en vertu de la Loi sur la Protection des victimes de Torture et de l'Alien Tort Claims Act. Viliena vit en dehors de Boston, Massachusetts depuis 2009 et a été signifiée personnellement avec la plainte civile le 23 mars 2017. Les Requérants ont déposé cette plainte par l'intermédiaire des avocats du Center for Justice and Accountability (CJA) et Dentons US LLP.

10. L'action en justice a été intentée aux États-Unis parce que Jean Morose Viliena s'est enfui là-bas début 2009, après que les autorités haïtiennes ont ouvert une information judiciaire à son encontre pour le meurtre en 2007 d'Eclesiaste Boniface, le frère de David Boniface, et l'attaque en 2008 d'une radio associative. Blessés par balle, Nissage Martyr avait alors été amputé d'une jambe et Juders Ysemé avait perdu un œil. Les trois hommes ont affirmé que Jean Morose Viliena était responsable d'une série d'attaques contre ses détracteurs entre 2007 et 2009.

11. L'action juridique a reçu beaucoup d'attention du media aux États-Unis et à l'étranger, y compris le [New York Times](#), [Associated Press](#), [Reuters](#), [Miami Herald](#), et [National Public Radio](#) à Boston. Leurs voix ont été diffusées dans un segment de WBUR à Boston le 23 mars. Les articles sont également apparus dans des grands journaux haïtiens.

12. Le 23 mars, Viliena fut mis au courant de la plainte contre lui. Le jour suivant, le 24 mars, Nissage Martyr, est mort mystérieusement. Selon sa famille, Nissage Martyr était en bonne santé avant sa mort. Dans la soirée du 24 mars, Nissage Martyr regardait un match du football chez Juders Ysemé avec au moins 60 personnes quand, soudainement, il est tombé malade avec des symptômes qui rassemblait du poison. Nissage Martyr est mort dans l'ambulance en route pour l'hôpital.

13. Les Requérants sont convaincus que Jean Morose Viliena est responsable de la mort de Nissage Martyr. Ils ont entendu que Viliena a payé de l'argent à son beau-frère pour assassiner tous les trois. L'une de leurs connaissances a été témoin d'une querelle entre le beau-frère et l'homme où ce dernier revendiquait le reste de son argent.<sup>2</sup> La connaissance a entendu le beau-frère dire que l'homme recevrait le reste de son argent après avoir tué les autres Requérants : Juders Ysemé et David Boniface. Les Requérants et leurs voisins aux Irois pense que Nissage a été tué en représailles pour le dépôt de la plainte contre Viliena et pour l'empêcher de témoigner au sujet des crimes commis contre lui.

14. La famille de Nissage a demandé une autopsie, qui a été autorisée par le Commissaire de Gouvernement de Jérémie le 6 avril 2017. (Ci-joint la lettre du Commissaire de Gouvernement de Jérémie). Jusqu'à présent, l'autopsie n'a pas été fait et la police n'a pas investigué la mort de Nissage.

#### ***Requièrents David Boniface et Juders Ysemé dans la clandestine***

15. Tandis que Viliena a déjà tenté de tuer les Requièrents en 2007 et 2008 (voir CIDH résolution 275/15, paragraphes 3(B) et (C)), et Viliena a des dizaines d'hommes de main travaillant pour lui, il peut commander d'autres pour exécuter la violence, comme l'a fait quand ils ont brûlé les maisons en 2009 (voir CIDH résolution 275/15, paragraphe 3(D)). Alors quelques jours après la mort de Nissage, Juders et David, avec sa femme et leur bébé, ont fui leurs maisons et leurs familles aux Irois pendant la nuit à cause des rumeurs qu'ils seraient assassinés à la suite. Jusqu'à présent Juders et Boniface sont cachés dans la clandestine loin des Irois et à part de leurs familles. Ils ne pensent pas qu'ils soient capables de rentrer aux Irois à cause de l'insécurité.

16. Juders et Boniface continuent leur travail comme défenseurs des droits de l'homme malgré les menaces contre eux. Ils continuent à travailler pour tenir Viliena et ses conspirateurs responsables de leurs crimes contre les résidents des Irois. Ils participent également aux réunions de plaidoyer, telles que des conférences de presse et des réunions avec des responsables politiques à Port-au-Prince.

17. Le 12 avril 2012, Amnesty International a publié « [Action Urgent Des Défenseurs des Droits Humains en Danger de Mort](#) » que demande aux autorités haïtiennes « de mener dans les meilleurs délais une enquête exhaustive et impartiale sur la mort de Nissage, d'en rendre les conclusions publiques et de traduire en justice les responsables présumés » et de « faire le nécessaire pour qu'ils bénéficient des mesures de protection ordonnées en 2015 par la

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<sup>2</sup> Les Requérants ont peur de révéler les noms des témoins parce que ces derniers, si identifiés ne voudront plus les aider parce qu'ils ont eux-mêmes peur d'être ciblés.



Commission interaméricaine des droits de l'homme, et à assurer sans délai la protection efficace de David Boniface, de Juders Ysemé et de leurs familles, dans le respect de leurs souhaits. »<sup>3</sup> (Ci-joint l'Action Urgent d'Amnesty International).

***Menaces contre la famille du décédé Nissage Martyr***

18. Depuis la nuit Nissage est décédé en mars, un groupe d'hommes viennent régulièrement dans la nuit à la porte de la maison familiale de Nissage aux Irois à lancer des pierres. Parfois, ils viennent tous les soirs ; parfois, ils viennent une fois par semaine. La maison est occupée par la veuve de Nissage et ses quatre enfants de l'âge majeur. La famille ne connaît pas qui ou combien personnes jettent des pierres parce qu'il est obscur et la famille a peur d'aller à l'extérieur. Les hommes qui jettent les pierres ont crié à aux trois sœurs de venir à la porte. Mais elles ne vont pas à la porte. Lorsque le frère de David Boniface, Esclesiste, fut appelé à la porte par un partisan de Viliena, ils l'ont tué. La veuve et les quatre enfants devraient garder un profil bas pour éviter tout danger. Ils ne quittent pas la maison très souvent pour éviter de rencontrer les partisans de Viliena.

19. Nissandère Martyr, le fils du décédé Nissage Martyr, compte remplacer son père dans le procès contre Viliéan aux Etats-Unis. Toutefois, comme les autres Requérants, il craint qu'il ne soit tué avant de pouvoir témoigner contre Jean Morose Viliéna. Le 19 juin 2017, Nissandere est allé à Port-au-Prince de s'occuper des formalités d'autopsie de son père. Un ami vient habituellement avec lui pour raisons de sécurité. Cette fois, Nissandere ne pouvait pas me permettre de payer son transport de venir avec lui, alors il est resté aux Irois. Alors qu'il se rendait à la maison de la mère de Nissandere, quelqu'un a jeté une pierre qui l'a frappé à la tête et le dos. Maintenant, mon ami connaît des problèmes de vision. Il croit que c'est parce qu'il est un témoin de certains des crimes impliqués dans le procès à Boston contre Viliéna.

20. Un jour en avril 2017, Nissandere a été sur le chemin à la morgue pour sécuriser un document à son avocat d'exécuter l'autopsie. Il a été arrêté par un ami dans la rue qui l'a dit qu'il avait entendu des rumeurs que Nissandere a été suivie par les partisans de Viliéna et qu'ils allaient tenter de le tuer. Nissandere a rentré chez lui et retardé le voyage jusqu'à quelques jours plus tard. La famille de Nissage prend au sérieux ces menaces en raison de l'histoire de Viliéna de menaces et de violences contre Nissagee, Boniface et Juders.

21. Un jour en janvier 2017, avant la mort de Nissage, Nissandere a été sur une moto. Alors qu'il s'est arrêté à un feu rouge, deux hommes que Nissandere a reconnu comme des partisans de Viliéna l'ont regardé et l'a reconnu comme le fils de Nissage Martyr. Les hommes ont dit qu'ils le tueraient. Nissandere estime que si il n'était pas parmi un groupe de personnes, il aurait été assassiner ce jour-là.

22. La famille de Nissage est terrifié et demande d'être inclut officiellement en tant que bénéficiaire des mesures préventives interaméricaines. Les partisans de Viliéna savent où la famille vive et ils ne peuvent pas déménager parce qu'ils n'ont pas de moyens.

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<sup>3</sup> UA : 87/17 Index : AMR 36/6045/2017 Haïti. Amnesty International a publié une demande d'action en urgence pour faire face à cette situation.

### III. PRIERE POUR SECOURS

23. Finalement, le gouvernement Haïtien n'a pas fait part des actions adoptées afin d'enquêter sur les faits allégués qui ont donné lieu à l'approbation de mesures conservatoire le 28 juillet 2015. Dans sa résolution du 28 juillet 2015, la CIDH a demandé au gouvernement Haïtien de l'informer de l'adoption des mesures conservatoires octroyées et d'actualiser régulièrement les informations à ce sujet. Le gouvernement Haïtien n'a adopté aucunes mesures à cet égard et aussi il n'a rédigé aucun rapport pour la CIDH.

24. Au contraire, déjà le Requièrent Nissage Martyr est mort mystérieusement et le père de Requièrent Juders Ysemé a tué par balle. L'état n'a pas pris des mesures nécessaires d'inquiéter ces évènements. Détenue dans cette impunité totale, les Requérants, y compris la famille de Nissage Martyr, déclarent qu'ils limitent leurs sorties et restent constamment à couvert pour éviter de rencontrer les partisans de Jean Morose Viliena. Juders et Boniface même vivent dans la clandestine. Ceci les empêche de mener une vie normale et les affecte économiquement car ils ne peuvent pas maintenir du travail.

25. Compte tenu des mots qui précèdent, l'IJDH demandent respectueusement que la commission commande le gouvernement d'Haïti :

- a. De rappeler au Gouvernement Haïtien qu'il a une responsabilité spéciale de protéger les défenseurs des droits humains et leur famille, y compris la famille de Nissage Martyr.
- b. D'appeler les autorités à mener une enquête exhaustive et impartiale sur la mort de Nissage Martyr, d'en rendre les conclusions publiques et de traduire en justice les responsables présumés.
- c. D'exhorter les autorités à faire le nécessaire pour qu'ils bénéficient des mesures de protection ordonnées en 2015 par la Commission interaméricaine des droits de l'homme, et à assurer sans délai la protection efficace de David Boniface, de Juders Ysemé et de leurs familles, et la famille de Nissage Martyr, dans le respect de leurs souhaits.
- d. De rédiger un rapport sur les actions prises afin d'investiguer les incidents présumés qui rendent nécessaire la rédaction de cette présente lettre.
- e. De fournir avec un calendrier d mise en œuvre des mesures de protection.

17 Juillet 2015



Nicole Phillips, Esq.  
Institute for Justice & Democracy in Haiti

Letter from Elizabeth Abi-Mershed, Deputy Exec. Sec'y, Inter-Am. Comm'n H.R.,  
to Jim Silk, Director, Allard K. Lowenstein Int'l Hum. Rts. Clinic at Yale  
Law School, Mario Joseph, Bureau des Avocats Internationaux, & Nicole  
Phillips, Inst. for Just. & Democracy in Haiti (July 28, 2015)  
[Plaintiffs\_0000358]



le 28 juillet 2015

**REF: Juders Ysemé  
MC-275-15  
Haïti**

Monsieur,

J'ai l'honneur de m'adresser à vous au nom de la Commission Interaméricaine des Droits de l'Homme (CIDH) au sujet des mesures conservatoires en faveur de Juders Ysemé et autres en République d'Haïti.

A ce titre, je souhaite vous informer que le 28 juillet 2015, la Commission a adopté la Résolution 26/2015, dont vous trouverez une copie jointe à cette lettre. Par cette résolution, la Commission a décidé, selon la procédure prévue à l'article 25 de son Règlement, de solliciter au Gouvernement de la République d'Haïti qu'il adopte des mesures conservatoires dans la présente affaire.

La CIDH publie sur son site internet ([www.cidh.org](http://www.cidh.org)) un résumé de cette mesure conservatoire qui a été accordée, avec le lien de la résolution correspondante, laquelle est aussi publiée dans son Rapport annuel. L'identité des bénéficiaires des mesures conservatoires est également publiée, à l'exception des enfants et des victimes de violence sexuelle. Dans les cas où les bénéficiaires de ces mesures conservatoires ne souhaiteraient pas que leurs noms complets soient divulgués, ces derniers devront en informer la CIDH par écrit dans les plus brefs délais.

Je vous prie d'agréer, Madame, l'expression de mes salutations les plus distinguées.

A handwritten signature in blue ink, appearing to read 'E. Abi-Mershed'.

Elizabeth Abi-Mershed  
Secrétaire exécutive adjointe

Jim Silk

Mario Joseph

Nicole Phillips

Letter from Paulo Abrão, Executive Secretary, Inter-Am. Comm'n H.R., to Jim Silk, Dir., Allard K. Lowenstein Int'l Hum. Rts. Clinic at Yale L. Sch., Mario Joseph, Bureau des Avocats Internationaux, Nicole Phillips, Hum. Rts. Legal Advisor, Daniel McLaughlin, Sr. Staff Att'y, Ctr. for Just. & Accountability, & Bonnie Lau, Morrison & Foerster (Sept. 25, 2019) [Plaintiffs\_0000571-72]

le 25 septembre 2019

**REF: Juders Ysemé et autres  
MC-275-15  
Haiti**

Messieurs / Mesdames,

J'ai le plaisir de m'adresser à vous au nom de la Commission interaméricaine des Droits de l'Homme pour accuser réception de votre communication du 23 et 25 de septembre de 2019, reçue par ce Secrétariat exécutif, qui traite de la question citée en référence.

À ce sujet, je voudrais vous informer que ces renseignements ont été transmis au Gouvernement et le contenu de la note précitée sera communiqué à la Commission pour suites pertinentes. Les parties pertinentes de cette communication établissent ce qui suit :

Je serai obligé au Gouvernement de Votre Excellence de bien vouloir formuler les observations qu'il estimera pertinentes dans un délai de 15 jours à compter de la date d'expédition de la présente communication. Plus particulièrement :

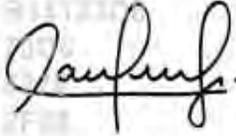
- a) Informer des actions que l'Etat aurait adopter afin de protéger la vie et l'intégrité personnelle de David Boniface et Juder Ysemé ainsi que des membres de leur famille proche ;
- b) Les mesures que l'Etat aurait adopter afin que les bénéficiaires puissent exercer leurs activités en tant que défenseurs des droits humains sans faire l'objet d'actes de violence ou d'harcèlement ;
- c) L'information actualisée sur les actions que l'Etat aurait pris pour enquêter sur le décès en mars 2017 du bénéficiaire, Nissage Martyr;
- d) Vos observations par rapport aux informations apportée par les requérants sur la situation des menaces que continueraient contre les bénéficiaires ;
- e) Vos observations en ce qui concerne la demande de modifier les mesures conservatoires pour inclure aux membres des familles immédiates des bénéficiaires, et les autres qui seraient dans des situations similaires.

Messieurs/ Mesdames  
Jim Silk  
Nicole Phillips  
Daniel McLaughlin

Mario Joseph  
Nicole Phillips  
Bonnie Lau

9/25/2019-KM-5005976

Je prie d'agréer, Messieurs/ Mesdames, l'expression de mes salutations distinguées.

  
Paulo Abrão  
Secrétaire exécutif

Letter from Mario Joseph, Bureaux des Avocats Internationaux, to Viosnel Bissainthe, Pub. Prosecutor for the Gov., Off. of the Pub. Prosecutor for the Ct. of First Instance of Les Cayes (July 30, 2014) (Exhibit B to Declaration of Mario Joseph, Attorney, *Boniface v. Viliena*, 338 F. Supp. 3d 50 (D. Mass. 2018), Dkt. 20-1)





STATE OF NEW YORK

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COUNTY OF NEW YORK

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CERTIFICATION

This is to certify that the attached translation is to the best of my knowledge and belief a true and accurate translation from French into English of the attached *BAI-Letter to Prosecutor.7.30.14*, dated July 30, 2014.

Edward J. Jacob  
Divergent Language Solutions, LLC

State of New York

County of New York

Subscribed to and sworn before me this 5<sup>th</sup> day of April, 2017.

by Edward Jacob.

Notary Public

MATTHEW C. ZELAK  
NOTARY PUBLIC, State of New York  
No. 01ZE6350239  
Qualified in New York County  
Commission Expires November 7, 2020



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**Open Letter**

Port-au-Prince, July 30

2014

Viosnel BISSAINTHE, Esq.  
Government Commissioner  
To the Court of First Instance of Cayes  
In its Prosecutor's Office –

Honorable Judge,

Acting through Mario Joseph, Esq., attorney with the Port-au-Prince bar, with Bar I.D. Numbers 003-129-800-7, 187-014-0, 187-0302-0, with domicile elected at Bureaux des Avocats Internationaux (BAI) located at #3, 2ème Impasse Lavaud (Lalue), Port-au-Prince, the citizens David BONIFACE, brother of the deceased Ecclésiaste BONIFACE assassinated on July 27, 2007 by the mayor of the town of Irois, Jean Morose Viliéna and his henchmen; Juders ISME and Nissage MARTYR, who were injured by bullets of the judge and his armed supporters;

**Have the honor to present to you:**

That Jean Morose Viliéna, the current interim mayor of the town of Irois, and his lackeys, are identified in two orders as being the perpetrator of and aiding and abetting the murder of Ecclésiaste Boniface, the destruction of public property to the detriment of the community of Irois, blows to and bullet wounds on Juders ISME and Nissage Martyr, as well as the burning of thirty-six (36) homes perpetrated in the town of Irois on April 8, 2008, on which the ruling of the investigating judge of Jérémie on January 25, 2010 as well as an Order of the Court of Cassation of the Republic of Haiti on Thursday, May 24, 2012, were respectively sent before the Criminal Court of Cayes without jury assistance in order to be judged there in accordance with the law;

That the specified Jean Morose VILIENA and his lackeys are also defendants

in two Orders. The one concerning you was handed down on January 25, 2010, reported on February 20 of the same year by the Court of First Instance of Jérémie and judged for Murder and Aiding and Abetting the Murder of Ecclésiaste BONIFACE, for destruction of public property to the detriment of the town of Irois, for blows and bullet wounds to Juders ISME and Nissage Martyr, by the Criminal Court of Jérémie in session without jury assistance on October twenty-five, two thousand ten; that those hit with this judgment brought an appeal in Cassation against the judgment and consequently, on Thursday, May twenty-four, two thousand twelve, the Court of Cassation of the Republic, of its own motion, *set aside the judgment of the Criminal Court of Jérémie without jury assistance rendered for the appealing parties Lifaite Livert, Monès dorcenat, Louines Charles, Lissage Villiéna and Michelet Noel and the Prosecution sends the case and the parties to the Criminal Court of Cayes without jury assistance so that justice may be done there;*

That the two orders infringed upon the authority of the final court decision without appeal, while the defendant Jean Morose VILLIENA and his lackeys are on the run, although they should be under arrest and locked up in civil prison in either Jérémie or Cayes pursuant to the orders in question;

That the plaintiffs, the civil party in the future proceedings, take this opportunity to call to your attention, Honorable Judge, that you will be required to make them appear before the Criminal Court of Cayes without jury assistance to be judged in accordance with the law. Of the twenty (20) defendants, only eight (8) are currently held in detention.

That at this stage, it is necessary that the defendants **Jean Morose Viliéna** as well as his lackeys, specifically **Maxène Vilssaint, Ti Américain aka, Haute Fort Bajon, Vilien Duclona, Martyr Kenson, Boileau Pierrot, Monès Dorcena, Guerson Pierre, France Isemé, Jean Pierre Gardy, Agnel Jean, Lifaite Livert, Esta Bell, Meritus Beaublanc, Cedernier Fleurine** be arrested and locked up in the Cayes Civil Prison until their final judgment in accordance with the Order of the Investigating Judge of the Court of First Instance of Jérémie on January 25, 2010 on the charge of Murder and Aiding and Abetting the Murder of Ecclésiaste BONIFACE and blows and bullet wounds to Judes ISME and Nissage MARTYR and the Order of the Court of Cassation of the Republic of Haiti.

That the appointment of Jean Morose VILLIENA as interim mayor of the town of Irois further constitutes a threat to the parents and relatives of the victims who agreed to make a complaint in the framework of these files, given that their assassins,

are, for the most part, still free.

All things considered, the plaintiffs request, if you please Honorable Judge, SUBPOENA TO APPEAR IN THE PROCEEDINGS all the defendants who were implicated in the commission of the crimes and who are still free so that they are present for the next criminal trial sessions of Cayes in order to be judged in accordance with the law and in accordance with the order of the Investigating Judge of the Court of First Instance of Jérémie on January 25, 2010 reported on February 20 of the same year and the order of the Court of Cassation of the Republic setting aside the Judgment of the Criminal Court of Jérémie without jury assistance on Thursday, May 24, 2012, and sending the case and the parties before the Criminal Court of Cayes. If you please as well, Honorable Judge, SUBPONEA THE WITNESSES in these proceedings to enlighten the Court. A list of witnesses is sent to you for all due legal purposes.

Enclosed you will find a list of WITNESSES TO BE SUBPOENAED in these criminal proceedings.  
Respectfully,

Mario JOSEPH, Attorney

CC: Jean Renel SANON, Esq., Minister of Justice and Public Safety  
Superior Council of Judicial Power  
Ms. Florence ELIE, Office of Citizen Protection  
Mr. Pierre ESPERANCE, National Human Rights Defense Network [RNDDH]  
Mr. Gustavo GALLON, Independent expert on the human rights situation in Haiti  
Inter-American Commission on Human Rights



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**Lettre ouverte**

Port-au-Prince, le 30 juillet

2014

Me Viosnel BISSAINTHE  
Commissaire du Gouvernement  
Près le Tribunal de Première Instance des Cayes  
En son Parquet.-

Honorable Magistrat,

Procédant par l'organe de Me Mario Joseph, avocat du Barreau de Port-au-Prince, identifié, patenté et imposé aux Nos : 003-129-800-7, 187-014-0, 187-0302-0, avec élection de domicile au Bureau des Avocats Internationaux (BAI) sis au #3, 2<sup>ème</sup> Impasse Lavaud (Lalue), Port-au-Prince ; les citoyens David BONIFACE, frère du défunt Ecclésiaste BONIFACE assassiné le 27 Juillet 2007 par le Maire de la Commune des Irois, Jean Morose Viliéna et ses sbires ; Juders ISME et Nissage MARTYR, victimes de blessures par balles du magistrat et de ses partisans armés ;

**Ont l'honneur de vous exposer :**

Que Jean Morose Viliéna, actuel Maire par intérim de la commune des Irois, ainsi que ses hommes de mains, sont identifiés dans deux Ordonnances comme étant l'auteur de l'assassinat et complicité d'assassinat notamment sur la personne de Boniface Ecclésiaste, de destruction de bien public aux préjudices de la communauté des Irois, de coups et de blessures par balles sur les personnes Juders ISME et Nissage Martyr, ainsi que l'incendie des trente-six (36) maisons perpétré dans la commune des Irois en date du 8 avril 2008 dont l'ordonnance du juge instructeur de Jérémie en du date 25 janvier 2010 ainsi qu'un Arrêt de la Cour de Cassation de la République d'Haïti en date du Jeudi 24 Mai 2012 les ont envoyés respectivement par devant le Tribunal criminel sans assistance de jury des Cayes pour y être jugés conformément à la loi ;

Que le nommé Jean Morose VILIENA et ses hommes de mains sont également inculpés

dans deux Ordonnances. Celle qui vous concerne a été rendue en date du 25 janvier 2010, signifiée le 20 Février de la même année par le Tribunal de Première Instance de Jérémie et jugés pour Assassinat et Complicité d'Assassinat sur la personne de Ecclésiaste BONIFACE, pour Destruction de bien public au préjudice de la communauté des Irois, pour Coups et Blessures par balles sur Juders ISME et Nissage Martyr, par le Tribunal criminel de Jérémie siégeant sans assistance de jury en date du vingt-cinq Octobre deux mille dix ; que ceux-là qui ont frappé de cette condamnation ont exercé un pourvoi en Cassation contre le jugement et par conséquent, en date du jeudi vingt-quatre Mai deux mille douze, la Cour de Cassation de la République a, d'Office, ***annulé le jugement du Tribunal Criminel de Jérémie siégeant sans assistance de jury rendu entre les pourvoyant Lifaite Livert, Mones dorcenat, Louines Charles Lissage Villiéna et Michelet Noel et le Ministère Public renvoie la cause et les parties par devant le Tribunal criminel des Cayes sans assistance de jury pour y être fait ce que de droit ;***

Que les deux ordonnances ont atteint l'autorité de la chose souverainement jugée, alors que l'inculpé Jean Morose VILLIENA et ses hommes de mains sont en cavale, pourtant ils auraient dû être pris de corps et écroués en la prison civile soit de Jérémie ou des Cayes suivant les ordonnances dont s'agit;

Que les requérants, partie civile dans les procès à venir, profitent de cette opportunité pour souligner à votre attention, Honorable Magistrat, qu'il y va de votre obligation de les faire comparaître par devant le Tribunal criminel sans assistance de Jury des Cayes pour y être jugés conformément à la loi. Parmi les vingt (20) inculpés seulement huit (8) d'entre eux sont actuellement gardés en détention.

Qu'à cette phase, il s'avère nécessaire que les inculpés **Jean Morose Viliéna** ainsi que ses hommes de mains notamment **Maxène Vilssaint, Ti Américain ainsi connu, Haute Fort Bajon, Viliéna Duclona, Martyr Kenson, Boileau Pierrot, Monès Dorcena, Guerson Pierre, France Isemé, Jean Pierre Gardy, Agnel Jean, Lifaite Livert, Esta Bell, Meritus Beaublanc, Cedernier Fleurine** soient pris de corps et écroués dans la prison civile des Cayes jusqu'à leur jugement définitif conformément à l'Ordonnance du Juge d'Instruction du Tribunal de Première Instance de Jérémie en date du 25 Janvier 2010 sous l'inculpation d'Assassinat et de Complicité d'Assassinat sur la personne d'Ecclésiaste BONIFACE et de Coups et Blessures par balles sur les personnes de Juders ISME et de Nissage MARTYR et à l'Arrêt de la Cour de Cassation de la République d'Haïti.

Que la nomination de Jean Morose VILLIENA comme Maire par intérim de la commune des Irois constitue d'ailleurs une menace pour les parents et proches parents des victimes qui ont accepté porté plainte dans le cadre de ces dossiers vue que leurs bourreaux, pour

la plupart, sont encore en liberté.

Tout compte fait, les requérants sollicitent qu'il vous plaise, Honorable Magistrat, CITER AUX FINS DE COMPARAITRE AU PROCÈS tous les inculpés ayant été impliqués dans la commission de ces crimes et qui sont encore en liberté de sorte qu'ils soient présents aux prochaines assises criminelles des Cayes pour y être jugés selon la loi et conformément à l'ordonnance du Juge d'Instruction du Tribunal de Première Instance de Jérémie en date du 25 Janvier 2010 signifiée le 20 Février de la même année et à l'arrêt de la Cour de Cassation de la République annulant le Jugement du Tribunal criminel sans assistance de jury de Jérémie en date du jeudi vingt-quatre Mai deux mille douze et renvoyant la cause et les partie par devant le Tribunal criminel des Cayes. Qu'il vous plaise aussi Honorable de CITER DES TEMOINS dans ce procès question d'éclairer la lanterne du Tribunal, ainsi donc une liste de témoins vous est acheminée aux fins utiles de droit.

Veuillez recevoir ci-joint la liste des TEMOINS A CITER dans le cadre de ce procès criminel.

Respectueusement,

Mario JOSEPH, Avocat

CC : Me Jean Renel SANON, Ministre de la Justice et de la Sécurité Publique  
Conseil Supérieur du Pouvoir Judiciaire  
Madame Florence ELIE Office du Protecteur des Citoyens  
Monsieur Pierre ESPERANCE, Réseau National de Défense des Droits Humains  
Monsieur Gustavo GALLON, Expert Indépendant sur la situation des Droits Humains en  
Haïti  
Commission Interaméricaine des Droits Humains



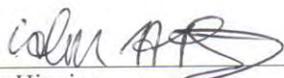
Letter from Mario Joseph, Bureaux des Avocats Internationaux, to Pub. Prosecutor for the Gov., Off. of the Pub. Prosecutor for the Ct. of First Instance of Jérémie (Mar. 31, 2017) (Exhibit F to Declaration of Mario Joseph, Attorney, *Boniface v. Viliena*, 338 F. Supp. 3d 50 (D. Mass. 2018), Dkt. 20-1)



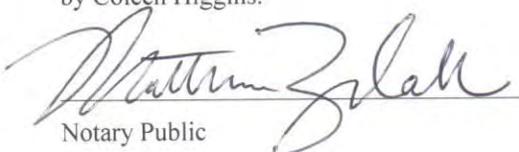
STATE OF NEW YORK )  
 )  
 )  
 )  
COUNTY OF NEW YORK ) ss

**CERTIFICATION**

This is to certify that the attached translation is to the best of my knowledge and belief a true and accurate translation from French into English of the attached Complaint and request for authorization of an autopsy, dated March 31, 2017, signed by Mario Joseph.

  
\_\_\_\_\_  
Coleen Higgins  
Divergent Language Solutions, LLC

State of New York  
County of New York  
Subscribed to and sworn before me this 21<sup>st</sup> day of April 2017,  
by Coleen Higgins.

  
\_\_\_\_\_  
Notary Public

**MATTHEW C. ZELAK**  
NOTARY PUBLIC, State of New York  
No. 01ZE6350239  
Qualified in New York County  
Commission Expires November 7, 2020



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**BUREAU DES AVOCATS INTERNATIONAUX**

**3, 2<sup>ème</sup> Rue Lavaud**

**B.P. 19048**

**Port-au-Prince, Haïti**

**Tel : +5092943-2106/ 07**

**E-mail: [avokahaiti@aol.com](mailto:avokahaiti@aol.com)**

**Port-au-Prince, March 31, 2017**

**To the Public Prosecutor of the Government  
At the Jérémie Court of First Instance**

**At his Office of the Public Prosecutor**

**Re: Complaint and request for authorization of an autopsy**

**Dear Sir,**

The Bureau des Avocats Internationaux (BAI), through Mr. Mario JOSEPH, Attorney at Law, who is lawfully admitted to the Port-au-Prince Bar and identified, licensed, and taxed under Nos.: 003-129-800-7, 187-014-0, 187-0302-0, with election of domicile for service of process at Bureau des Avocat Internationaux (BAI) located at #3, 2<sup>ème</sup> Impasse Lavaud (Lalue), Port-au-Prince and at the Office of the Court Clerk at the Jérémie Court of First Instance, presents its complements and informs you that it has authorization to serve and as a result, it is serving the widow of Nissage MARTYR, the woman named Roselaine ANTOINE, and Nissandère MARTYR, respectively identified under numbers: 08-08 99-1963-01-00005 and 08-08-99-1991-11-00007, successors of the deceased Nissage MARTYR, who died suddenly on Friday, March 24, 2017, at approximately 11:30 in the evening, while he was being transported urgently to the hospital in order to receive the care appropriate for this case;

The BAI requests, as required, pursuant to Article 35 of the Haitian Code of Criminal Investigation (*Code d'Instruction Criminelle*, "CIC"), that criminal prosecution be instituted against X within the context of this case and that it be referred, within the legally stipulated time limit, to the Office of Investigation for the legal consequences thereof;

The BAI requests, as also required, that the conduct of an autopsy on the body of Nissage MARTYR be requested in order to be able to determine the causes of the death and the condition of the limp and lifeless body of Nissage MARTYR to be established for all useful legal purposes, in compliance with Article 34 of the Code of Criminal Investigation.

Wherefore, the BAI requests that may it please Mr. Public Prosecutor to institute criminal prosecution against X, the perpetrator of this crime, and immediately take appropriate measures to complete the autopsy of the body of Nissage MARTYR as soon as possible in order to establish the causes of his death thereby, which will contribute to the sound and impartial administration of justice.

[signature]

Nissandère MARTHYR  
**Complainant**

**Mario JOSEPH, Attorney at Law**  
**Bureau des Avocats Internationaux**



**BUREAU DES AVOCATS INTERNATIONAUX**

3, 2<sup>ème</sup> rue Lavaud  
B.P. 19048  
Port-au-Prince, Haïti  
Tel : +5092943-2106/ 07  
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Port-au-Prince, le 31 Mars 2017

**Au Commissaire du Gouvernement  
Près le Tribunal de Première Instance de Jérémie  
En son Parquet.-**

**Objet : Plainte et demande d'autorisation d'autopsie**

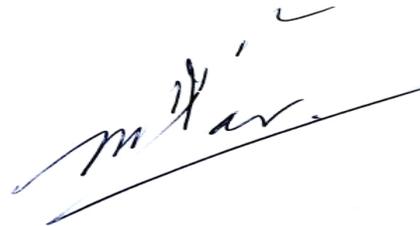
**Honorable Magistrat,**

Le Bureau des Avocats Internationaux (BAI), par l'organe de Maître Mario JOSEPH, avocat régulièrement inscrit au Barreau de Port-au-Prince, identifié, patenté et imposé aux Nos : 003-129-800-7, 187-014-0, 187-0302-0, avec élection de domicile au Bureau des Avocat Internationaux (BAI) sis au #3, 2<sup>ème</sup> Impasse Lavaud (Lalue), Port-au-Prince et au greffe du Tribunal de Première Instance de Jérémie, vous présente ses compliments et vous informe qu'il a mandat d'occuper et comme de fait il occupe pour la veuve de Nissage MARTYR, la femme née Roselaine ANTOINE et Nissandère MARTYR, respectivement identifiés aux numéros : 08-08 99-1963-01-00005, 08-08-99-1991-11-00007, ayants droit du défunt Nissage MARTYR qui a été frappée d'une mort subite le vendredi 24 Mars 2017, vers les 11h30 du soir, pendant qu'il était en route pour être transporté d'urgence à l'hôpital en vue de recevoir les soins appropriés à son cas ;

Le BAI requiert, qu'il y a lieu, qu'en vertu de l'article 35 du Code d'instruction Criminelle (CIC), de mettre l'action Publique en mouvement contre X dans le cadre de ce dossier et de le déférer, dans le délai légal, au Cabinet d'Instruction pour les suites de droit ;

Le BAI requiert, qu'il y a lieu également, de solliciter l'autopsie du cadavre de Nissage MARTYR pour pouvoir établir les causes de la mort et l'état du corps inerte et sans vie de Nissage MARTYR aux fins utiles que de droit ce, en conformité avec l'article 34 du CIC ;

Pourquoi le BAI sollicite qu'il vous plaise, Honorable Magistrat, Mettre l'action Publique en mouvement contre X, auteur de ce crime et du coup, prendre des mesures appropriées pour réaliser, dans le plus court délai possible, l'autopsie du cadavre Nissage MARTYR en vue d'établir les causes de sa mort ce faisant, ce sera saine et impartiale justice.



Nissandère MARTHYR  
**Plaignant**

**Mario JOSEPH, Av**  
**Bureau des Avocats Internationaux**

Letter from Nat'l Leadership Conf. of Haitian Mayors to Paul Antoine Bien-Aimé,  
Minister of the Interior & Territorial Collectives (Oct. 27, 2008) [VIL0022-  
25, VIL0037-39]



CONFERENCE NATIONALE DES MAIRES HAITIENS SUR LE LEADERSHIP  
NATIONAL LEADERSHIP CONFERENCE OF HAITIAN MAYORS  
CONFERENCIA NACIONAL DE LOS ALCALDES HAITIANOS PARA EL LIDERAZGO

Mayor, Otis Wallace, City of Florida City Florida *Co-Founder*  
Mayor, Jean Simon Thony, City of St. Louis du Sud,  
*President* Mayor, Moise Jn Michel, City of Cotes De Fer  
V. Mayor, St. Fleur Philocles, City of Cap Haitien  
Mayor, Telisme Dutellen, City of Anse A Veau  
Mayor, Mathe Wilmane, City of Tomassique

Mayor, Gaston Estima, City of St. Louis du Nord  
Mayor, Pierre David, City of Beaumont  
Mayor, Jn Frantz Theodat, City of Tabarre  
Mayor, Mathe Wilmane, City of Tomassique  
Mayor, Moise C. Pierre, City of Fort Liberte

Port-au-Prince, October 27, 2008

To : His Excellency Paul Antoine Bien Aime  
Minister of the Interior and of Territorial Collectives

From : The National Leadership Conference of Haitian Mayors

Subject : **Report**

**Mr. Minister, Sir**

A delegation composed of the following individuals: Mr. Jude Saint-Natus, Director of Territorial Collectives; Mr. Jean Simon Thony, Mayor de Saint Louis du Sud; Mr. Jean Frantz Teodat, Mayor of Tabarre; Mr. Wisman Menar, Mayor of Verettes; Mr. David Pierre, Mayor of Beaumont; Mr. Peguy Jean, Journalist; Mr. Hugue Celestin, Member of the Chamber of Deputies. It visited the department of Grand'Anse on Friday, October 17, 2008 to conduct an inquiry into the arrest and imprisonment of the honorable Mayor Jean Morose Viliena.

The National Leadership Conference of Haitian Mayors has the honor of submitting to you the following report:

The delegation arrived in Jérémie at about 10 a.m. on Friday, October 17, 2008. It was received by the Mayor of the municipality of Jérémie, Mr. Garnier Pierre Louis; Mr. Clinton Jeanbon, Mayor of the municipality of Dame Marie; by officers of MINUSTAH (United Nations Stabilization Mission in Haiti) and of the National Police of Haiti.

On the same day it met the chief judge of the civil court in the department, Attorney Yvan Arnoux, who let it be known that he knew nothing more about the arrest of the mayor and he learned of this vexing affair as we ourselves did. He adds that there are a thousand other ways to take action against the mayor without arresting him and **suggested the formation of a commission of prominent persons in which he is prepared to participate in order to find a solution with the judge leading to the provisional release of the Mayor.**

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Then the delegation went to the MINUSTAH base in order to continue the inquiry. Questioning those concerned about the arrest of the Mayor, they said that no one was affected by this notice. Meanwhile a MINUSTAH vehicle was routinely patrolling the municipality of Les Irois; it was then that the examining judge asked MINUSTAH to drive the Mayor to the Jérémie prison where the judge had arrested him with his own hands.

**And MINUSTAH and the HNP together affirmed that the Judge traveled alone to Les Irois by motorcycle, although he could have used MINUSTAH or HNP vehicles to carry out the arrest that he ordered, naturally after having received the complaint file submitted by the Prosecutor.**

Next, the delegation visited the Superintendent of the Government, Attorney Joseph Descharles, still seeking information. The Superintendent stated flatly that he had been unaware of the arrest of the Mayor. He was quite stunned when he found out. He went on to tell the delegation **that the examining judge made himself increasingly scarce following the arrest of the mayor showed a monstrous expression that inhibited everyone from daring to speak to him about it.**

However, the Commissioner added that **the examining judge spoke of being shocked by the fact that the Haitian State did not provide him with even one service vehicle. It appeared that, according to police chief, Mayor Morose could have been a guinea pig used by the judge in order to draw the attention of the Ministry of Justice.**

The next day, Saturday, October 18, the delegation went to the municipality of Les Irois to gather the amplest information. Upon the arrival of the delegation, a vast crowd of people holding signs greeted the delegation with shouts of "Free Mayor Morose." Then it went to the municipal hall where the doors had been closed since the arrest and jailing of Mayor Jean Morose. The Vice Mayor, Attorney Nuclas Julnor, told us exactly the facts that led to the jailing of his colleague, the Mayor. A short time later, two mayors in the delegation spoke to the crowd that was impatient, but firm in its conviction and determination, and told the gathering to return home calmly and without violence and that the mayor will soon be freed. During the afternoon, the delegation visited the justice of the peace for the municipality of Les Irois, Attorney Saint Jean Bel, to gather more reliable information.

Asked why the Mayor was arrested, he said it was because there had been a scuffle between the Mayor's partisans and those of the member of the Chamber of Deputies in the wake of the launch by the Deputy of a radio station that maligned the Mayor. Asked if the Mayor had been at the scene when all of that happened, he answered, "no".

Asked if he thought that the Mayor was the mastermind, he answered that he did not know.

Asked why the Mayor is accused of attempted murder when he was not at the scene according to his own admission, he answered that it was the examining judge who acted on his own.

Asked on what grounds did he act, he answered, "I do not know."

Asked why the Mayor is accused of complicity in murder, he answered that it was perhaps because an individual was found dead in the streets of Les Irois the previous December. In the view of the judge, the inquiry he conducted did not accuse the Mayor, as did that conducted by the criminal investigation division (SDPJ) of the HNP.



At nightfall, the Delegation returned to Jérémie. Simultaneously on Sunday morning, under the auspices of the mayors' association of Grand'Anse, after discussing this burning question, all the municipalities in the department decided to shut their gates in solidarity with their imprisoned colleagues and they demanded their immediate release.

Clearly, all the authorities consulted expressed a certain disagreement with the Judge's decision to arrest mayor Villiena Morose under known conditions, even somewhat bizarre ones, leaving a suspicion about the judge's true motives for the decision, to repeat among other things and not least, the departmental director of the HNP.

The Conference, while thanking you for your support, calls on the Government through you to see that this case be brought to light and that justice be done.



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**CERTIFICATE OF ACCURACY**

Natalia Taylor, on behalf of Language Connections, certifies:

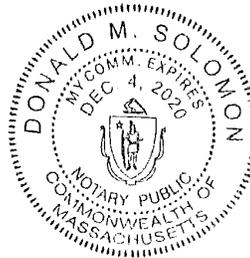
1. That our translator(s) are proficient in both the **French** and the **English** languages.
2. That we have made the attached translation of the below mentioned original document(s) from **French** into **English** and hereby certify that the same is a true and complete translation to the best of our translator(s) knowledge, ability and belief.
3. Document name:
  - 2008.10.27 Letter from Conference Nationale Des Maires Haitiens Sur Le Leadership

Signature: \_\_\_\_\_

Subscribed to and sworn before me this 24 day of February, 2018 by Natalia Taylor.

Notary Public

My commission expires: 4 Dec 2020





CONFERENCE NATIONALE DES MAIRES HAITIENS SUR LE LEADERSHIP  
NATIONAL LEADERSHIP CONFERENCE OF HAITIAN MAYORS  
CONFERENCIA NACIONAL DE LOS ALCALDES HAITIANOS PARA EL LIDERAZGO

Mayor, Otis Wallace, City of Florida City, Florida, *Co-Founder*  
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Mayor, Telsme Dutellen, City of Anse A Veau  
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Mayor, Gaston Estima, City of St. Louis du Nord  
Mayor, Pierre David, City of Beaumont  
Mayor, Jn Frantz Theodat, City of Tabarre  
Mayor, Mathe Willmane, City of Tomassique  
Mayor, Molsé C. Pierre, City of Fort Liberté

Port-au Prince, 27 Octobre 2008

A : Son Excellence Paul Antoine Bien Aïme  
Ministre de l'Intérieur et des Collectivités Territoriales

De : La Conférence Nationale Des Maires Haïtiens sur le  
Leadersip(NLCHM)

Objet : Rapport

Monsieur le Ministre,

Une délégation composée des personnalités suivantes : Mr Jude Saint-Natus, Directeur des Collectivités Territoriales, Mr Jean Simon Thony Maire de Saint Louis du Sud, Mr Jean Frantz Teodat, Maire Tabarre, Mr Wisman Menar, Maire de Verettes, Mr David Pierre Maire de Beaumont, Mr Peguy Jean Journaliste, Mr Hugue Celestin Depute, elle s'est rendue dans le département de la Grande Anse le vendredi 17 octobre 2008 pour enquêter sur l'arrestation et l'emprisonnement de l'honorable Maire Jean Morose Viliena.

La conférence Nationale des maires haïtiens sur le leadership a l'honneur de vous transmettre le rapport suivant :

La délégation est arrivée à Jérémie le vendredi 17 octobre 2008 aux environs de 10 hres du matin. Elle était accueillie par le Maire de la commune de Jérémie, Mr Garnier Pierre Louis, Mr Clinton Jeanbon Maire de la commune de Dame Marie, par les agents de la MINUSTAH et de la Police Nationale d'Haïti

Le même jour, elle a rencontré le doyen du Tribunal civil du département Me Yvan Arnoux, lequel a fait savoir qu'il ne sait plus rien dans l'arrestation du Maire et il a appris cette vexatoire nouvelle comme nous l'avons aussi entendue. Il ajoute qu'il y a mille autres façons qu'on pourrait agir contre le maire sans procéder à son arrestation et propose la formation d'une commission de notables à laquelle il est prêt à participer pour trouver une entente avec le juge pour obtenir une libération provisoire du Maire.

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Puis la délégation s'est rendue à la base de la MINUSTAH pour la continuité de l'enquête. Interrogeant les concernés sur l'arrestation du Maire, ils disent que la MINUSTAH n'a pas été touchée de cet avis de la part de plus d'un. Cependant un véhicule de la MINUSTAH patrouillait la commune des Irois comme par habitude, c'est alors que le juge d'instruction a demandé à la MINUSTAH de conduire le Maire à la prison de Jérémie que le juge lui-même a arrêté de ses propres mains.

**Et la MINUSTAH et la PNH s'accordent pour affirmer que le Juge s'est rendu seul aux Irois à motocyclette, alors qu'il avait la possibilité de bénéficier de véhicules et des éléments de la MINUSTAH et de la PNH pour procéder à cette arrestation qu'il a lui-même commandité, naturellement après avoir reçu dossier de plaintes transmis par le Parquet**

Après, la délégation s'est conduite chez le Commissaire du Gouvernement Me Joseph Descharles toujours en quête d'informations. Le Commissaire a dit clairement qu'il n'a pas été au courant de l'arrestation du Maire. Il a été tout à fait étonné de constater une chose pareille. Il a eu l'avantage de dire à la délégation **que le Juge Instructeur se fait de plus en plus rare depuis après l'arrestation du Maire et donne un visage monstrueux pour que personne n'ose lui en parler.**

Toutefois le Commissaire a ajouté que **le Juge Instructeur se dit toujours choqué par le fait que l'Etat Haïtien ne lui donne même pas un véhicule de service. Il semblerait que selon le commissaire, le Maire Morose peut être une cobaye utilisée par le juge pour pouvoir attirer l'attention du Ministère de la Justice.**

Le lendemain samedi 18 octobre, la délégation est allée dans la commune des Irois pour recueillir les plus amples informations. A l'arrivée de la délégation une foule innombrable munie de pancartes en mains accueillait la délégation au cri fou de 'Libérer le Maire Morose. Puis, elle s'est rendue à la Mairie dont les portes ont été fermées depuis l'arrestation et l'emprisonnement du Maire Jean Morose. Le Maire adjoint Me Nuclas Julnor nous a parlé parfaitement sur les faits qui ont conduit à l'emprisonnement de son collègue Maire. Quelque temps plus tard, deux maires de la délégation s'adressaient à la foule désespérée, mais ferme dans sa conviction et sa détermination pour la dire de rentrer à la maison dans le calme, de ne pas faire de la violence et que le maire sera bientôt libéré. Dans l'après midi, la délégation s'est rendue chez le juge de Paix de la commune des Irois, Me Saint Jean Bel pour recueillir les informations les plus fiables.

Lui demandant pourquoi le Maire est-il arrêté ;il a répondu c'est parce qu'il y avait un laisser frapper entre les partisans du Maire et ceux du Député suite à la fondation d'une station de radio par le Député visant à calomnier le Maire. Lui demandant est ce que le Maire était sur lieux quand tout cela arrivait ; il a répondu non

Lui demandant est ce qu'il pense que le Maire serait l'auteur intellectuel de ces faits ;il a répondu il ne sait pas ;

Lui demandant pourquoi le Maire est accusé de tentative de mort alors qu'il n'était pas sur les lieux selon ses dires; il a répondu c'est le juge d'instruction qui a agi de son propre gré.

Lui demandant sur rapport de qui a-t-il agi ;il a répondu ;Je ne sais pas ;

Lui demandant pourquoi le maire est-il accusé de complicité de meurtre ;il a répondu c'est peut être parce qu'une personne a été retrouvé morte dans les rues des Irois le mois de Décembre dernier . Selon l'avis du juge, l'enquête qu'il a menée n'avait pas accusé le Maire, comme celle conduite par le SDPJ de la PNH.

A la tombée du soir, la Délégation a repris le chemin du retour à Jérémie. Tandis que dimanche dans la matinée, sous l'auspice de l'association des maires de la Grand'Anse, après avoir discute de cette question brûlante, toutes les communes du département ont décide de fermer leur portes en signe de solidarité avec leurs confrères emprisonné et réclament sans délai son élargissement.

En clair, toutes les autorités consultées laissaient entendre un désaccord certain ave l'acte du Juge d'arrêter dans les conditions connues le maire Villiena Morose et même une sorte de bizarrerie, une suspicion autour des vraies motivations du juge dans cet acte, pour répéter une d'entre elles et non pas des moindres, le Directeur départemental de la PNH.

La Conférence, tout en vous remerciant de votre support, interpelle le Gouvernement par votre intermédiaire afin que lumière soit faite sur ce cas et justice soit rendue.

Letter from Nicole Phillips, Hum. Rts. Legal Advisor, Daniel McLaughlin, Sr. Staff Att’y, Ctr. for Just. & Accountability, & Bonnie Lau, Morrison & Foerster, to Inter-Am. Comm’n H.R. (Aug. 30, 2019) [Plaintiffs\_0000714-27]

SEP 23 '19 PM 3:35  
56 - IACHR - CIDH

30 August 2019

Inter-American Commission on Human Rights  
1889 F Street, N.W.  
Washington, D.C. 20006  
United States  
[cidhdenuncias@oas.org](mailto:cidhdenuncias@oas.org)

**Ref: Juders Ysemé *et al.* / MC-275-15 / Haiti**

To the Inter-American Commission on Human Rights,

We write on behalf of our clients, David Boniface, Nissage Martyr<sup>1</sup> and Juders Ysemé, to respectfully request that, in accordance with Article 25 of the Rules of Procedure, the Inter-American Commission on Human Rights (“the Commission”) reiterate to the State of Haiti the precautionary measures ordered via Resolution 26/2015 on 28 July 2015. Given present threats of violence against our clients, they are at risk of irreparable harm without immediate intervention from the State of Haiti.

#### Procedural History

Haitian human rights defenders David Boniface, Nissage Martyr and Juders Ysemé (MC-275-15) have sought the intervention of the Commission to ensure the protection of their rights on two prior occasions. On July 17, 2015, Boniface, Martyr, and Ysemé requested that the Commission issue precautionary measures to ensure their safety in light of urgent risks posed by Jean Morose Viliena, a former mayor of Les Irois, and the Haitian militia KOREGA.<sup>2</sup> This request reported numerous violations of the beneficiaries’ rights, including the extrajudicial killing of Boniface’s brother, the torture and attempted assassination of Martyr and Ysemé and the mass arson of homes in our clients’ hometown of Les Irois.<sup>3</sup>

On July 28, 2015, the Commission granted this request in Resolution 26/215, and recommended that the State of Haiti adopt measures to preserve the life and personal safety of Boniface, Martyr, and Ysemé and their families.<sup>4</sup> The Resolution recommended that the State adopt measures such that the beneficiaries can carry out their activities as defenders of human rights without harassment; create an

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<sup>1</sup> On March 24, 2017, the day after our clients’ complaint in a civil suit filed in the United States District Court for the District of Massachusetts was served on Jean Morose Viliena, Nissage Martyr died under suspicious circumstances in Les Irois, Haiti. On August 31, 2018, the United States District Court substituted Nissage Martyr’s son, Nissandère Martyr, as a plaintiff in the civil action. We now represent Nissandère Martyr, along with Juders Ysemé and David Boniface in the civil suit against Viliena pending before the United States District Court for claims of torture, extrajudicial killing, attempted extrajudicial killing and arson.

<sup>2</sup> Allard K. Lowenstein International Human Rights Clinic at Yale Law School, Bureau Des Avocats Internationaux, Institute for Justice and Democracy in Haiti, *Demand d’Extension des Mesures Preventives Contre Le Republique d’Haïti au Nom des Defenseurs Haïtiens des Droits de l’Homme David Boniface, Nissage Martyr, et Juders Ysemé et Tous Les Autres Dans Des Situations Similaires*, paras 78-79 (July 17, 2015).

<sup>3</sup> *Id.* at paras 17-20.

<sup>4</sup> Inter-American Commission on Human Rights, Resolution 26/2015, Precautionary Measure No. 275/15 Juders Ysemé and others, Haiti, para. 14 (July 28, 2015).

agreement on these measures to be adopted with the beneficiaries; and provide information on actions taken to investigate the allegations that led to the precautionary measures.<sup>5</sup>

The State of Haiti took no action following this Resolution, as reported to the Commission in a second letter submitted on behalf of our clients requesting an extension and modification of precautionary measures on July 16, 2017.<sup>6</sup> This letter informed the Commission that not only had the State failed to act on the 2015 order, but that the security of the beneficiaries and their families remained in peril. The letter alerted the Commission to the death of Nissage Martyr on March 24, 2017, which occurred under mysterious circumstances the day after the beneficiaries served Viliena with process in a civil suit in the United States District Court for the District of Massachusetts (the “United States District Court”).<sup>7</sup> The letter requested that the Commission remind the State of its obligations under Resolution 26/2015 and take immediate action to implement the outlined measures, to protect the lives of Ysemé, Boniface and their families, and investigate the death of Martyr.<sup>8</sup> To date, the beneficiaries have received no response from the Commission to this second request.

#### Current Serious and Urgent Situations Presenting a Risk of Irreparable Harm

Despite the Commission’s Resolution 26/2015, we are unaware of any steps taken by the State of Haiti to protect the life and personal safety of our clients, or any other beneficiaries referenced in the Resolution. Against this backdrop of inaction by the State, the threats against our clients have multiplied and reached a crisis point, as illustrated by the emergency protective order issued by the United States District Court on August 8, 2019, which bars Viliena from having any contact with our clients, their families, or specified potential witnesses (attached as Annex 1).

Following Nissage Martyr’s death in March 2017, Ysemé and Boniface both fled Les Irois fearing for their safety. They have been living in hiding ever since – separated from their families, friends and networks of support, save for a few brief phone calls and meetings. With the exception of Boniface’s wife, none of their friends or family know where they live or have visited their home in order to protect everyone’s safety. Unable to work and isolated from their community, their life in hiding has taken a deep financial, physical and psychological toll.

Jean Morose Viliena, the architect of the repression directed at our clients, visited Haiti recently from the United States, where he resides. On August 4, 2019, Viliena delivered a speech by microphone in our clients’ hometown of Les Irois at a soccer match on an open parcel of land owned by his family.<sup>9</sup> Viliena said that he had returned to Les Irois to be a candidate for mayor or deputy. He also stated that he could now run for elected office because he no longer had any legal troubles.

Following his public speech, Viliena went to his house with a small group of people. He told those in attendance that Nissage Martyr was already dead and that Juders Ysemé and David Boniface needed to be killed by any means. Viliena stated that once they were both dead he would no longer have any problems and would be free to do what he wanted.

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<sup>5</sup> *Id.*

<sup>6</sup> Institute for Justice and Democracy in Haiti, *Demand d’Extension des Mesures Preventives Contre Le Republique d’Haïti au Nom des Defenseurs Haïtiens des Droits de l’Homme David Boniface, Nissage Martyr, et Juders Ysemé et Tous Les Autres Dans Des Situations Similaires*, pars 23-25 (July 16, 2017).

<sup>7</sup> *Id.* at paras 9-14.

<sup>8</sup> *Id.* at para. 25.

<sup>9</sup> The identity of the witness(es) to these events are being withheld because they credibly fear for their safety should they be identified.



Later that same day, on August 4, 2019, two men on a motorcycle came to Ysemé and Boniface's home. Ysemé answered the door and they asked for him by name. Ysemé did not recognize them and, fearing for his safety, he told them that Juders Ysemé was not there. The two men left. Our clients do not know how these two men learned of their whereabouts. Ysemé and Boniface stayed in the home that night but did not sleep because they feared people would return to try to kill them. Their landlord and neighbors saw the two men on the motorcycle. The landlord told them to leave the apartment permanently because he does not want to be involved in any trouble. The following day, on August 5, 2019, Ysemé and Boniface immediately left the apartment and have not returned.

On the basis of these events, and referencing the Commission's Resolution 26/2015, our clients applied for an emergency protective order before the United States District Court on August 6, 2019. On August 8, 2019, the Court ruled that our clients had demonstrated good cause and entered an emergency protective order, which bars Viliena from having any contact with our clients, their families, or specified potential witnesses. The protective order does not apply, however, to the State of Haiti, which continues to ignore the recommendations designed to preserve our clients' lives and personal safety specified in Commission's Resolution 26/2015.

Indeed, the threats against our clients have continued. The two men on the motorcycle returned to Ysemé and Boniface's former apartment a few days later on August 9, 2019. On August 20, 2019, Gilnor Niclas, Viliena's brother-in-law, convened a meeting at his home in Cho and stated that he was holding the meeting for Viliena, who was no longer in Haiti. Niclas and the meeting participants discussed finding and targeting Ysemé and Boniface on Viliena's behalf. Our clients have been forced to move once again to protect their safety and now live with the constant knowledge that they are being actively tracked and targeted for execution by Viliena and his associates.

#### Requests for Action

Our clients, along with their families and friends, are at grave and imminent risk of being irreparably harmed by Viliena and his associates in retaliation for their attempts to hold Viliena accountable for his human rights abuses against those he perceives as political opposition members. As detailed in our July 2015 request, our clients' right to life (Article 4) and right to humane treatment (Article 5), along with a host of additional rights protected by the Convention are being violated. Our clients' situation has continued to deteriorate since the Commission issued its Resolution 26/2015.

We respectfully request that the Commission reiterate to the State of Haiti the recommendations detailed in Resolution 26/2015 and remind the State of its ongoing obligations under the American Convention on Human Rights:

- Adopt the necessary measures to preserve the life and personal safety of our clients (Juders Ysemé, David Boniface and Nissandère Martyr), as well as their families members and witnesses.
- Adopt the necessary measures such that the beneficiaries can carry out their activities as defenders of human rights without being subjected to acts of violence and harassment;
- Come to an agreement on the measures to be adopted with the beneficiaries and their representatives;
- Inform on the actions adopted in order to investigate the allegations that gave rise to the precautionary measures adopted by the Commission and thus avoid its repetition.
- Keep the Commission timely informed about the adoption of the required precautionary measures and update this information periodically.

In addition, we respectfully request that the Commission take up the proposed measures outlined in our 16 July 2017 communication to the Commission, namely:

- Calling upon the State of Haiti to carry out an exhaustive and impartial investigation into the March 2017 suspicious death of Nissage Martyr, to render its findings publicly, and to bring to justice any individual(s) who are presumed to be responsible.<sup>10</sup>

Finally, in light of the State of Haiti's failure to take *any* steps over the prior four years to implement the foregoing obligations, which has contributed to our clients' present dire situation and threatened their right to life (Article 4) and right to humane treatment (Article 5), we respectfully request that the Commission adopt any further action directed at the State of Haiti as it deems appropriate under the circumstances.

Sincerely,



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*Copied by email to:*

Rapporteurship on Human Rights Defenders (Commissioner Francisco José Eguiguren Praeli) and Rapporteur for Haiti (Commissioner Flávia Piovesan)

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<sup>10</sup> See 16 July 2017 IJDH communication to the Commission, page 5.

**ANNEX 1**

**Protective Order**  
***Boniface, Martyr, and Ysemé. v. Viliena*, No. 17-cv-10477-ADB**  
**(Dist. Ct. Dist. of Mass.).**

Case 1:17-cv-10477-ADB Document 80 Filed 08/08/19 Page 1 of 2

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DAVID BONIFACE, NISSANDÈRE	*	
MARTYR, AND JUDERS YSEMÉ,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	Civil Action No. 17-cv-10477-ADB
	*	
JEAN MOROSE VILIENA,	*	
	*	
Defendant.	*	

**PROTECTIVE ORDER**

BURROUGHS, D.J.

Plaintiffs David Boniface, Nissandère Martyr, and Juders Ysemé (“Plaintiffs”) have moved for the entry of a protective order pursuant to Federal Rule of Civil Procedure 26(c). [ECF No. 77]. Based on its review of the papers presented, including the memorandum filed in support of the motion, the declaration of Juders Ysemé, the declaration of Bonnie Lau, and supporting exhibits, the Court finds the following: Defendant Jean Morose Viliena (“Defendant”) was present in Haiti on or around August 4, 2019 and had contact with former associates during which he discussed harming Plaintiffs. Plaintiffs Boniface and Ysemé reasonably fear for their safety and are concerned about retaliation by Defendant. Their fears are based on past dealings with Defendant as well as a recent interaction with men they believe to be Defendant’s associates.

In light of the foregoing, the Court concludes that Plaintiffs have demonstrated good cause for a protective order. The Court has previously ordered that Defendant shall have no contact with witnesses. See [ECF No. 78-4 at 5]. Given Plaintiffs’ motion, however, the Court

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is persuaded that a written order is necessary and intends that this Protective Order serves as a written record of the terms of the existing no-contact order.

IT IS HEREBY ORDERED that:

- (1) Jean Morose Viliena shall have no contact with David Boniface, Nissandère Martyr, and Juders Ysemé or their families;
- (2) Jean Morose Viliena shall have no contact with the following witnesses disclosed in Plaintiffs' initial disclosures: Rodane Marc Lebon, Jean Denais Laguette, Frankel Yseme, Villeme Duclona, Lissage Viliena, Gilnor Niclas, Pierrot Boileau, Meritus Beaublanc, Maxene Vilsaint, Marc Arthur Conte, Jean Pierre Gardy (a.k.a. Gardy Dro), Léonel Livert (a.k.a. Lifaite Livert), Michelet Noel, Benïcoit Belle, Jean Louis Belle, Monès Dorcenat, Louinés Charles (a.k.a. Kéleman), Kenson Martyr, Guerson Pierre, Esto Belle, France Isme, Angel Jean (a.k.a. Agnel Jean), Cedernier Fleurime, Maxime Roumer, and George Simon;
- (3) Upon application to the Court, Plaintiffs may request that the Court extend this Protective Order to additional witnesses; and,
- (4) Any violation of this Protective Order may result in sanctions.

**SO ORDERED.**

August 8, 2019

/s/ Allison D. Burroughs  
ALLISON D. BURROUGHS  
U.S. DISTRICT JUDGE

Le 30 aout 2019

Commission interaméricaine des droits de l'Homme  
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**Ref: Juders Ysemé et al. / MC-275-15 / Haïti**

A l'attention de la Commission interaméricaine des droits de l'Homme,

Nous écrivons au nom de nos clients, David Boniface, Nissage Martyr<sup>1</sup> et Juders Ysemé, afin de solliciter respectueusement que, en accord avec l'article 25 du Règlement, la Commission interaméricaine des droits de l'Homme (ci-après "la Commission") réitère à l'Etat de Haïti les mesures conservatoires ordonnées le 28 juillet 2015 par la résolution 26/2015. Compte tenu des menaces actuelles de violence contre nos clients, ceux-ci se trouvent à risque de dommages irréparables sans l'intervention immédiate de l'Etat de Haïti.

#### Historique de la procédure

Les défenseurs haïtiens des droits de l'homme, David Boniface, Nissage Martyr et Juders Ysemé (MC-275-15) ont sollicité l'intervention de la Commission pour assurer la protection de leurs droits à deux occasions préalables. Le 17 juillet 2015, Boniface, Martyr, et Ysemé ont requis que la Commission émette des mesures conservatoires pour assurer leur sécurité au vu de risques urgents posés par Jean Morose Viliena, ancien maire des Irois, et la milice haïtienne KOREGA.<sup>2</sup> Cette requête rapportait de nombreuses violations des droits des bénéficiaires, y compris l'exécution extrajudiciaire du frère de Boniface, la torture et la tentative d'assassinat de Martyr et d'Ysemé et l'incendie criminel de masse des maisons dans la commune d'origine de nos clients, Les Irois.<sup>3</sup>

Le 28 juillet 2015, la Commission a accordé cette requête dans la résolution 26/2015, et a recommandé que l'Etat de Haïti adopte des mesures pour préserver la vie et la sécurité personnelle de Boniface, Martyr, et Ysemé et leurs familles.<sup>4</sup> La résolution recommandait que l'Etat adopte des mesures

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<sup>1</sup> Le 24 mars 2017, le jour après que la plainte au civil de nos clients déposée auprès du tribunal de district des Etats-Unis pour le Massachussets ait été signifiée à Jean Morose Viliena, Nissage Martyr est décédé dans des circonstances suspectes aux Irois, Haïti. Le 31 aout 2018, le tribunal de district des Etats-Unis a substitué le fils de Nissage Martyr, Nissandère Martyr, en tant que plaignant dans l'action civile. Nous représentons maintenant Nissandère Martyr, ainsi que Juders Ysemé et David Boniface dans la procédure civile contre Viliena en instance devant le tribunal de district des Etats-Unis pour allégations de torture, exécution extrajudiciaire, tentative d'exécution extrajudiciaire et incendie volontaire.

<sup>2</sup> Allard K. Lowenstein international human rights clinic à Yale law school, Bureau des avocats internationaux, Institute for justice and democracy in Haiti, *Demande d'extension des mesures préventives contre la République d'Haïti au nom des défenseurs haïtiens des droits de l'homme David Boniface, Nissage Martyr, et Juders Ysemé et tous les autres dans des situations similaires*, §§ 78-79 (17 juillet 2015).

<sup>3</sup> *Id.* §§ 17-20.

<sup>4</sup> Commission interaméricaine des droits de l'homme, résolution 26/2015, mesure conservatoire n° 275/15 Juders Ysemé et autres, Haïti, § 14 (28 juillet 2015).

telles que les bénéficiaires puissent continuer leurs activités de défenseurs des droits de l'Homme sans harcèlement; crée un accord sur ces mesures à adopter avec les bénéficiaires ; et fournisse des informations sur les actions prises pour enquêter sur les allégations qui ont menées aux mesures conservatoires.<sup>5</sup>

L'Etat de Haïti n'a pris aucune action à la suite de cette résolution, comme nous l'avons rapporté à la Commission dans une seconde lettre du 16 juillet 2017, soumise au nom de nos clients, réclamant une extension et une modification des mesures conservatoires.<sup>6</sup> Cette lettre informait la Commission que, non seulement l'Etat a manqué d'agir sur l'ordonnance de 2015, mais que la sécurité des bénéficiaires et de leurs familles restait en péril. La lettre alertait la Commission du décès de Nissage Martyr, survenu le 24 mars 2017 dans des circonstances mystérieuses le jour après que les bénéficiaires eurent signifié à Viliena des poursuites au civil auprès du tribunal de district des Etats-Unis pour le Massachussets (ci-après le "tribunal de district des Etats-Unis").<sup>7</sup> La lettre réclamait que la Commission rappelle à l'Etat ses obligations sous la résolution 26/2015 et prenne des actions immédiates pour mettre en œuvre les mesures soulignées, afin de protéger les vies d'Ysemé, Boniface et leurs familles, et enquêter sur le décès de Martyr.<sup>8</sup> À ce jour, les bénéficiaires n'ont reçu aucune réponse de la Commission quant à cette seconde requête.

#### Situations actuelles et urgentes présentant un risque de dommage irréparable

Malgré la résolution 26/2015 de la Commission, nous ne sommes pas au courant de quelconque mesures prises par l'Etat de Haïti pour protéger la vie et la sécurité personnelle de nos clients, ou d'aucun autre bénéficiaire mentionné dans la résolution. Dans ce contexte d'inaction de l'Etat, les menaces contre nos clients se sont multipliées et ont atteint un point de crise, comme en témoigne l'ordonnance de protection d'urgence émise par le tribunal de district des Etats-Unis le 8 aout 2019, qui interdit à Viliena d'avoir tout contact avec nos clients, leurs familles, ou des témoins potentiels spécifiés (cf. Annexe 1).

Suite au décès de Nissage Martyr en mars 2017, Ysemé et Boniface ont fui Les Irois, craignant pour leur sécurité. Depuis lors, ils vivent dans la clandestinité, séparés de leurs familles, amis et réseaux de soutien, à l'exception de quelques brefs coups de téléphones et entrevues. A l'exception de l'épouse de Boniface, aucun de leurs amis ou famille ne sait où ils vivent ou ne leur a rendu visite afin de protéger la sécurité de tout le monde. Dans l'incapacité de travailler et isolés de leur communauté, leur vie dans la clandestinité leur inflige d'importants dégâts financiers, physiques et psychologiques.

Jean Morose Viliena, l'architecte de la répression dirigée à l'encontre de nos clients, s'est récemment rendu à Haïti depuis les Etats-Unis, où il réside. Le 4 aout 2019, Viliena a délivré un discours au microphone dans la commune d'origine de nos clients, Les Irois, lors d'un match de football sur une parcelle de terre appartenant à sa famille.<sup>9</sup> Viliena a déclaré qu'il était revenu aux Irois pour se porter candidat au poste de maire ou député. Il a également déclaré qu'il pouvait dorénavant se présenter aux élections car il n'avait plus de soucis judiciaires.

A la suite de son discours public, Viliena est allé chez lui avec un petit groupe de personnes. Il a dit aux personnes présentes que Nissage Martyr était déjà mort et que Juders Ysemé et David Boniface

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<sup>5</sup> *Id.*

<sup>6</sup> Institute for Justice and Democracy in Haiti, *Demande d'Extension des Mesures Préventives Contre La République d'Haïti au Nom des Défenseurs Haïtiens des Droits de l'Homme David Boniface, Nissage Martyr, et Juders Ysemé et Tous Les Autres Dans Des Situations Similaires*, §§ 23-25 (16 juillet 2017).

<sup>7</sup> *Id.* §§ 9-14.

<sup>8</sup> *Id.* §§ 25.

<sup>9</sup> L'identité de(s) témoin(s) à ces événements n'est pas divulguée en raison de leur crainte raisonnablement fondée pour leur sécurité au cas où ils seraient identifiés.

devaient être tués par tout moyen. Viliena a déclaré qu'une fois qu'ils seront tous les deux morts, il n'aurait plus aucun problème et serait libre de faire ce qu'il veut.

Plus tard le même jour, le 4 août 2019, deux hommes en moto sont venus chez Ysemé et Boniface. Ysemé a ouvert la porte et ils ont demandé après lui. Ysemé ne les connaissait pas et, craignant pour sa sécurité, leur a dit que Juders Ysemé n'était pas là. Les deux hommes sont partis. Nos clients ne savent pas comment ces deux hommes ont appris où ils se trouvaient. Ysemé et Boniface sont restés dans leur appartement cette nuit-là mais n'ont pas dormi car ils craignaient que les personnes reviennent pour tenter de les tuer. Le propriétaire de l'appartement et les voisins ont vu les deux hommes sur la moto. Le propriétaire leur a dit de quitter l'appartement définitivement parce qu'il ne voulait pas être impliqué. Le jour suivant, le 5 août 2019, Ysemé et Boniface ont immédiatement quitté l'appartement et n'y sont plus retournés.

Sur la base de ces événements, et en référence à la résolution 26/2015 de la Commission, nos clients ont sollicité une ordonnance de protection d'urgence auprès du tribunal de district des Etats-Unis le 6 août 2019. Le 8 août 2019, le tribunal a déclaré que nos clients avaient démontré un motif valable et a émis une ordonnance de protection d'urgence qui interdit à Viliena d'avoir tout contact avec nos clients, leurs familles, ou tout autre témoin potentiel spécifié. L'ordonnance de protection ne s'applique toutefois pas à l'Etat de Haïti, qui continue d'ignorer les recommandations destinées à préserver la vie et la sécurité personnelle spécifiées dans la résolution 26/2015 de la Commission.

Les menaces contre nos clients ont en effet continué. Les deux hommes en moto sont retournés à l'ancien appartement d'Ysemé et Boniface quelques jours plus tard, le 9 août 2019. Le 20 août 2019, Gilnor Niclas, le beau-frère de Viliena a convoqué un rassemblement dans sa maison à Cho et a déclaré qu'il tenait cette réunion pour Viliena, qui n'était plus à Haïti. Niclas et les membres de l'assemblée y ont discuté de trouver et cibler Ysemé et Boniface pour Viliena. Nos clients ont été forcé de déménager à nouveau pour se protéger et vivent à présent ayant constamment conscience qu'ils sont activement traqués et ciblés pour être exécutés par Viliena et ses associés.

#### Demandes d'action

Nos clients, ainsi que leurs familles et amis, sont en danger grave et imminent de subir des dommages irréparables de la part de Viliena et ses associés en représailles à leurs tentatives de tenir Viliena responsable pour ses violations des droits de l'homme contre ceux qu'il perçoit comme opposants politiques. Comme il est détaillé dans notre demande de juillet 2015, le droit à la vie de nos clients (article 4) et leur droit à un traitement humain (article 5), ainsi qu'une pléthore de droits additionnels protégés par la Convention sont présentement violés. La situation de nos clients continue de se détériorer depuis que la Commission a émis sa résolution 26/2015.

Nous sollicitons respectueusement que la Commission réitère à l'Etat de Haïti les recommandations détaillées dans la résolution 26/2015 et rappelle à l'Etat ses obligations sous la Convention américaine relative aux droits de l'homme :

- Adopter les mesures nécessaires pour préserver la vie et la sécurité personnelle de nos clients (Juders Ysemé, David Boniface et Nissandère Martyr), ainsi que les membres de leurs familles et témoins ;
- Adopter les mesures nécessaires telles que les bénéficiaires puissent continuer leurs activités de défenseurs des droits de l'homme sans être victimes d'actes de violence et harcèlement ;
- Arriver à un accord sur les mesures à adopter avec les bénéficiaires et leurs représentants ;



- Informer sur les actions adoptées dans le but d'enquêter sur les allégations qui ont suscité les mesures conservatoires adoptées par la Commissions et ainsi éviter leur répétition ;
- Informer la Commission de l'adoption des mesures conservatoires requises et la tenir périodiquement au courant.

De plus, nous sollicitons respectueusement que la Commission adopte les mesures soulignées dans notre communication du 16 juillet 2017, c'est-à-dire :

- Exhorter l'Etat de Haïti de procéder à une enquête exhaustive et impartiale du décès suspect de Nissage Martyr en mars 2017, de publier ses conclusions, et de traduire en justice tout individu qui serait présumé responsable.<sup>10</sup>

Enfin, compte tenu du manquement de l'Etat de Haïti de prendre des mesures au cours des quatre dernières années pour mettre en œuvre les obligations susmentionnées, ce qui a contribué à la situation grave de nos clients et menacé leur droit à la vie (article 4) et leur droit à un traitement humain (article 5), nous sollicitons respectueusement que la Commission adopte toute action supplémentaire visant l'Etat de Haïti qu'elle jugera appropriée au vu des circonstances.

Sincèrement,



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<sup>10</sup> Cf. Communication de IJDH à la Commission, 16 juillet 2017, p. 5.

**ANNEXE 1**

**Ordonnance de protection**  
***Boniface, Martyr, et Ysemé. contre Viliena, No. 17-cv-10477-ADB***  
**(Trib. Dist. Dist Mass.).**

TRIBUNAL DE DISTRICT DES ETATS-UNIS  
DISTRICT DU MASSACHUSETTS

DAVID BONIFACE, NISSANDÈRE  
MARTYR, ET JUDERS YSEMÉ

Demandeurs,

Contre

JEAN MOROSE VILIENA

Défendeur.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Action civile n° 17-cv-10477-ADB

**ORDONNANCE DE PROTECTION**

BURROUGHS, D.J. [juge de district]

Les demandeurs, David Boniface, Nissandère Martyr, et Juders Ysemé (« les demandeurs ») ont fait la demande d'une ordonnance de protection conformément à l'article 26 (c) du code fédéral de procédure civile. [ECF n°77]. Sur la base de l'examen des documents présentés, y compris le mémorandum déposé en support de la demande, la déclaration de Juders Ysemé, la déclaration de Bonnie Lau, et les pièces à l'appui, le tribunal conclue ce qui suit : le défendeur Jean Morose Viliena (« le défendeur ») était présent en Haïti le, ou autour du, 4 aout 2019 et a eu des contacts avec ses anciens associés au cours desquels il a discuté nuire aux demandeurs. Les demandeurs Boniface et Ysemé craignent avec raison pour leur sécurité, et s'inquiètent de représailles de la part du défendeur. Leurs craintes sont fondées sur des relations antérieures avec le défendeur, ainsi qu'une interaction récente avec des hommes qu'ils pensent être des associés du défendeur.

A la lumière ce qui précède, le tribunal conclue que les demandeurs ont démontré un motif valable pour une ordonnance de protection. Le tribunal a précédemment ordonné que le défendeur n'ait aucun contact avec les témoins. Cf. [ECF n° 78-4, 5]. Cependant, compte tenu de la requête

des demandeurs, le tribunal est persuadé de la nécessité d'une ordonnance écrite et a l'intention que cette ordonnance de protection serve de trace écrite des conditions de l'interdiction de communiquer préexistante.

PAR LA PRESENTE, IL EST ORDONNE QUE :

- (1) Jean Morose Viliena n'ait aucun contact avec Danid Boniface, Nissandère Martyr, et Juders Ysemé ou leurs familles ;
- (2) Jean Morose Viliena n'ait aucun contact avec les témoins ci-dessous, dévoilés dans les documents de divulgation initiale des demandeurs : Rodane Marc Lebon, Jean Denais Laguerre, Frankel Ysemé, Villeme Duclona, Lissage Viliena, Gilnor Niclas, Pierrot Boileau, Meritus Beaublanc, Maxene Vilsaint, Marc Arthur Conte, Jean Pierre Gardy (a.k.a. Gardy Dro), Léonel Livert (a.k.a. Lifaite Livert), Michelet Noel, Benoît Belle, Jean Louis Belle, Monès Dorcenat, Louinès Charles (a.k.a. Kèleman), Kenson Martyr, Guerson Pierre, Esto Belle, France Isme, Angel Jean (a.k.a. Agnel Jean), Cedernier Fleurime, Maxime Roumer, et George Simon ;
- (3) Sur demande auprès du tribunal, les demandeurs peuvent solliciter que le tribunal étende cette ordonnance de protection à des témoins supplémentaires ; et,
- (4) Toute violation de cette ordonnance de protection pourra entraîner des sanctions.

**AINSI ORDONNE.**

8 aout 2019

/s/ Allison D. Burroughs  
ALLISON D. BURROUGHS  
JUGE DE DISTRICT DES ETATS-UNIS

Letter from Bettina B. Plevan, President, Ass'n of the Bar of the City of N.Y., to  
Gérard Latortue, Minister of the Interior & Territorial Collectives, & Henri  
Dorléans, Minister of Just. & Pub. Sec. (Aug. 12, 2005)



## The Association of the Bar of the City of New York

Office of the President

### PRESIDENT

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August 12, 2005

Monsieur Gérard Latortue  
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*Monsieur le Premier Ministre et Monsieur le Ministre,*

The Association of the Bar of the City of New York (the “Association”) strongly condemns the decision by Haiti's highest court, the Cour de Cassation, to vacate the convictions of sixteen people found guilty in 2000 by a jury in the trial of those charged with responsibility for the Raboteau massacre of April 1994.<sup>i</sup> On May 3, 2005, the Cour de Cassation reversed a trial that had been pronounced fair to both the victims and the accused by international monitors. The Cour de Cassation’s recent order reverses its own former determination and violates Haitian Constitutional and international law. Moreover, the defendants, well represented in both the trial and appeal,<sup>ii</sup> at neither stage objected to having been tried by a jury, the issue on which the court reversed the trial.

The Association is an independent non-governmental organization of more than 22,000 lawyers, judges, law professors and government officials. Founded in 1870, the Association has a long history of dedication to human rights, notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world.<sup>iii</sup> Noteworthy also is the expertise of the Committee on African Affairs in legal and policy issues relating to Africa and the African diaspora.

Raboteau is a neighborhood close to the ocean where democratic organization was always vigorous and effective. In 1991, when the Haitian army ousted former President Aristide, the people of Raboteau protested en masse. They also set an inspiring example during the years of the dictatorship. In retribution for this, between April 18 and 22, 1994, soldiers terrorized Raboteau, methodically ransacking and attacking the homes and families of members of the resistance.<sup>iv</sup>

The decision to send the Raboteau massacre case to a jury was made in 1999, a year prior to the trial. Both the Court of Appeals and the Cour de Cassation approved the determination, documented in an *ordonnance* that placed the 1987 Constitution above a conflicting 1928 law.<sup>v</sup> The defendants' lawyers never contested that determination. Apart from reversing its own prior determination, the Cour de Cassation's May 2005 order arguably invalidates Article 50 of Haiti's 1987 Constitution, which requires jury trials for "crimes de sang," generally defined in Haitian law and practice as murder, parricide, infanticide and poisoning.<sup>vi</sup>

Moreover, the Raboteau trial was broadcast on national television and radio and closely observed by both national and international monitors and pronounced to be fair to both the victims and the accused by, among others, the then-United Nations Independent Expert on Haiti, Adama Dieng, and the UN Support Mission to Haiti at the time.<sup>vii</sup> It is troubling that the Cour de Cassation made an apparently political decision to delay its decision on the appeal from early 2001 to March 2005. The Association is also troubled that the reversal of these convictions could encourage the rising lawlessness that has enveloped Haiti since the overthrow of the democratically elected President in February 2004. Indeed, those who support the reversal of these convictions have hailed as "freedom fighters" some of the most notorious criminals convicted in the Raboteau trial.

Finally, Haiti is a State Party to the International Covenant on Civil and Political Rights and the American Convention on Human Rights, which place on States Parties the obligation to ensure the rights to an effective remedy, to its determination by competent judicial, administrative or legislative authorities, and to the enforcement of such remedies.<sup>viii</sup> The politically motivated timing and unconstitutional manner of the vacating of the convictions of those previously and fairly held accountable for the Raboteau massacre is a step backwards for the observance of the rule of law in Haiti. The convictions ought to be reinstated in accordance with the Haitian Constitution and international law.

Respectfully,



Bettina B. Plevan

cc: Caribbean Community (CARICOM)  
Inter-American Commission on Human Rights  
Organization of American States  
United Nations Stabilization Mission in Haiti  
U.S. Secretary of State Condoleezza Rice

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<sup>i</sup> See Decision of the Cour de Cassation, 2d Section, Appeal of Castera Cenafils, et al., May 3, 2005, available at <http://www.ijdh.org/pdf/Raboteau.pdf>.

<sup>ii</sup> David Stoelting, *Enforcement of International Criminal Law*, 34 INT'L L. 669, 671 (2000).

<sup>iii</sup> The reports of the Committee are available in full on the Association's website, <http://www.abcny.org>.

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<sup>iv</sup> Si M Pa Rele, *Rapport de la Commission Nationale de Verite et de Justice* at 66 (1997).

<sup>v</sup> *Sur le Tribunal Compétent avec ou Assistance de Jury, Ordonnance* (signed by Jean Sénat Fleury, *Juge d'Instruction*), at 150-151, available at <http://www.ijdh.org/rabord.pdf>. See also John Donnelly, *Justice Delayed: Showdown Looms in Haiti*, THE BOSTON SUNDAY GLOBE, June 11, 2000, at A1. Article 3 of the 1928 law states that related offenses, even when committed by the same individual will be tried without a jury. *Haiti: Obliterating justice, overturning of sentences for Raboteau massacre by Supreme Court is a huge step backwards*, Press Release, Amnesty International note 1 (May 26, 2005).

<sup>vi</sup> Article 296 of the Constitution of the Republic of Haiti states that “All Codes of Law or Handbooks of Justice, all laws, all decree laws and all decrees and orders (Arrêtés) currently in force shall be maintained in all matters *not contrary* to this Constitution.” (Emphasis added.) See GIBBERT H. FLANTZ & ALBERT P. BLAUSTEIN (EDS.), CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (1990), cited in *Haiti: Obliterating justice, overturning of sentences for Raboteau massacre by Supreme Court is a huge step backwards*, Press Release, Amnesty International note 2 (May 26, 2005).

<sup>vii</sup> U.N. Press Release, *Raboteau Verdict in Haiti A Landmark in Fight Against Impunity; But Case Not Yet Finished, Says UN Independent Expert* (Nov. 20, 2000), available at <http://www.unog.ch/news2/documents/newsen/hr00090e.html>; see also Press Release, United Nations Support Mission to Haiti (MICAH) (Nov. 20, 2000); see generally *U.S. Official Says Meaningful Reform in Haiti Will Generate More Aid; Cites good governance as a prerequisite for long-term prosperity*, U.S. State Department (May 23, 2002).

<sup>viii</sup> International Covenant on Civil and Political Rights, Art. 2(3), 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; American Convention on Human Rights, Arts. 2 and 25, OAS Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978.



William G. O'Neill, *Un besoin prioritaire: reformer la justice en Haïti*, Nat'l Coal. for Haitian Rts. (Mar. 1995),  
[https://www.nchr.org/nchr/hrp/jud\\_reform\\_fr.htm](https://www.nchr.org/nchr/hrp/jud_reform_fr.htm)

## national coalition for haitian rights

HAITI INSIGHT ONLINE



NOTE: En mars 1995, la *National Coalition for Haitian Rights* publiait **Un besoin prioritaire: reformer la justice en Haïti**. Ce pamphlet de quelques pages fournissait au lecteur un tour à vol d'oiseau des conditions dans lesquelles a évolué le système judiciaire haïtien et indiquait au gouvernement haïtien et à la communauté internationale les réformes à adopter à court et à moyen terme. Ceux qui désirent avoir la version anglaise du pamphlet peuvent immédiatement sélectionner [Judicial Reform in Haiti](#).

L'analyse étant toujours à jour, nous la livrons à vous et à d'autres. Soyez libre de le distribuer à votre guise. Nous serions heureux de recevoir vos commentaires et vos suggestions.

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## Le système judiciaire d'Haïti

*La question maintenant est de savoir  
si les nouvelles coutumes légales seront acceptées  
par les simples citoyens sud-africains.  
Au lieu de percevoir la loi comme un instrument de répression de l'état,  
la respecteront-elle en tant que force indépendante  
pouvant parfois les protéger contre l'état?*

**Anthony Lewis, Revolution by Law, *The New York Times*,  
13 Janvier 1995**

Anthony Lewis écrit sur l'Afrique du Sud, mais ses mots résonnent autant en Haïti aujourd'hui. Parmi les nombreuses exigences d'Haïti, la réforme du système judiciaire demeure l'une des premières revendications populaires. La réforme judiciaire, la création d'une nouvelle force de police, la refonte du système pénitencier haïtien, et l'examen de violations de droits humains commises dans le passé sont essentiels au cours de cette délicate phase transitoire de la dictature à la démocratie. Sans un remaniement fondamental du système judiciaire, on ne peut garantir le respect des droits humains, et l'état de droit restera une utopie.

Le système judiciaire haïtien ne fonctionne pas. De plus, de puissants membres de la société haïtienne, l'armée, certains industriels cossus et des propriétaires terriens en particulier, ont pendant longtemps entravé sa bonne marche. En réalité, la loi a servi d'instrument d'oppression et de terreur.

Le système judiciaire haïtien manque de tout: ressources, personnel compétent, indépendance, envergure, et honnêteté. Les services offerts sont une disgrâce, les tribunaux difficiles à différencier des petites boutiques et des chaumières désuètes des villes et villages d'Haïti. Les juges et les commissaires de gouvernement, mal formés et souvent choisis selon leurs accointances ou leur malléabilité à se soumettre aux demandes de leurs bienfaiteurs, accordent "justice" aux plus offrants ou aux plus puissants.

La Mission Civile Internationale en Haïti de l'OEA/ONU (MICIVIH) a effectué une étude nationale du système judiciaire à la fin de l'année 1993 après l'évacuation de la Mission vers la République Dominicaine [Voir *Analyse du système judiciaire haïtien suivi de recommandations pour améliorer l'administration de la justice en Haïti*, Groupe de travail sur le système judiciaire haïtien de la Mission Civile de l'OEA/ONU (MICIVIH), 17 mars 1994.] Parmi ses observateurs

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[Peacebuilding in Haiti: Findings of the International Peace Academy regarding challenges to peacebuilding in Haiti.](#)

[Peace Brigades International, Haiti: Reports from the PBI contingent in Haiti on conflict resolution and political challenges.](#)

de droits humains figuraient des avocats qui ont assisté à des jugements, des dépositions, des audiences, et des travaux de police. Les observateurs ont présenté aux juges et aux commissaires des informations sur de spécifiques violations de droits humains, y compris des preuves révélant la participation des militaires dans ces abus et les conditions inhumaines de détention. Ils ont fait le suivi en réclamant les résultats des enquêtes criminelles menées au sujet de certains cas portés par la Mission à l'attention de la Justice. Grâce à cette expérience, les observateurs de la MICIVIH ont identifié les problèmes qui entravent l'administration de la justice à travers Haïti. Parmi les plus critiques, citons:

- Les forces armées [les militaires, la police, les chefs de section, les attachés et membres du groupe paramilitaire Front pour l'Avancement et le Progrès Haïtien (FRAPH)] ont menacé, battu et parfois assassiné des juges, commissaires de gouvernement et avocats. Le cas le plus notoire fut l'assassinat en plein jour de Guy Malary, Ministre de la Justice, le 14 Octobre 1993.
- Le Commissaire de Gouvernement à Port-au-Prince Laraque Exantus, nommé à ce poste par le Ministre Malary, fut enlevé de sa résidence en début Février 1994 et n'a jamais été revu depuis. Exantus était responsable de plusieurs enquêtes criminelles délicates, dont le meurtre de Malary. De riches propriétaires terriens louent les services de soldats ou d'hommes de main afin de soudoyer les juges ou les avocats représentant des paysans impliqués dans des conflits terriens. Les juges et commissaires de gouvernement admettent leur crainte d'émettre un mandat d'arrêt ou d'enquêter sur les cas impliquant des militaires, des groupes paramilitaires ou certains partisans de l'armée.
- La corruption et l'extorsion se retrouvent à tous les niveaux du système judiciaire. Les salaires sont dérisoires et la corruption est élevée. Les gens paient la police pour arrêter un rival; les commissaires et les juges exigent une compensation avant de lancer une enquête ou d'émettre un mandat. Les chefs de section imposent arbitrairement des taxes qui n'existent dans aucun manuel juridique, puis menacent d'emprisonner ou de battre ceux qui refusent de payer. Les géoliers réclament paiement avant d'autoriser un individu à apporter de la nourriture à un parent détenu et ils extorquent aussi de l'argent des prisonniers désespérés qui veulent éviter des bastonnades ou de pires traitements. Parfois les membres d'une famille arrivent à acheter la libération d'un parent emprisonné.
- La plupart des juges et des commissaires sont mal formés et manquent de motivation. Beaucoup de juges, spécialement ceux du plus bas niveau, les juges de paix, n'ont jamais fréquenté une école de droit, ni reçu une formation appropriée pour être juges et montrent peu d'enclin à recevoir une telle formation. Par exemple, quand en 1990 l'Expert Spécial des Nations Unies pour Haïti, un éminent juriste français, offrit d'envisager la tenue de séminaires en Europe pour les juges haïtiens, le président de la Cour de Cassation d'alors répondit que cela n'était pas nécessaire puisque les juges haïtiens savaient déjà tout ce qu'ils étaient en droit de connaître pour accomplir leurs tâches.
- Les tribunaux ne disposent même pas de matériels les plus rudimentaires nécessaires à leur fonctionnement. La plupart ne dispose ni d'électricité ni de téléphone. Les photocopieuses, voire les ordinateurs ou les télécopieurs, sont inconnus. La plupart des juges et des commissaires du gouvernement ne possèdent même pas les manuels indispensables à leur travail: le Code Civil, le Code d'Instruction Criminelle et le Code Pénal. Les dossiers sont dans un désordre complet et certains avis datant de plus de dix ans sont encore attachés aux murs et aux portes.
- La plupart des Haïtiens méprisent avec raison tant les avocats que les juges <197> enfin pratiquement tous ceux qui ont une relation avec le système judiciaire. Les gens évitent tout contact avec le système à moins qu'ils n'aient d'autre alternative. C'est cher, corrompu et en grande partie mystérieux puisque les lois et la plupart des procédures sont en français, une langue que la plupart des Haïtiens comprend difficilement et qui est parlée et lue seulement par une élite. Les Haïtiens essaient de régler eux-mêmes leurs disputes, ce qui débouche parfois sur des solutions géniales et acceptables pour un pays confronté à une grande pauvreté et un fort taux d'analphabétisme; et d'autres fois sur des solutions déplorables et condamnables.
- Les secteurs les plus puissants de la société haïtienne -- les familles les plus riches, les officiels du gouvernement, et surtout l'appareil militaire -- ont bénéficié d'une totale impunité. En contravention des exigences constitutionnelles, les soldats n'ont jamais été traduits par devant un tribunal civil pour répondre des abus commis contre des citoyens. Cette impunité a nourri le cycle de violence et le scepticisme de la population quant à la "justice" en Haïti.

[Situation of Human Rights in Haiti: Report of the UN Commission on Human Rights, 1996.](#)

[MICIVIH OEA/ONU: La police nationale d'Haïti et les droits de l'homme](#)

[State Department 1997 Haiti Report](#)

[Haiti Held Hostage Report of the Watson Institute](#)

[Amnesty International Report HAITI Steps Forward, Steps Back: Human Rights 10 Years After the Coup \(27/09/2001\)](#)

- Haïti ne dispose pas d'une force de police professionnelle. Récemment encore, la police se composait de membres des forces armées n'ayant reçu aucune formation de police. Les membres de l'armée et de la police se relayaient; certains officiers pouvait littéralement posséder deux uniformes dans leur armoire et choisir l'habit approprié -- le bleu de la police ou le kaki du militaire -- selon le mois ou la tâche assignée. Les policiers haïtiens ne patrouillent pas, ni ne mènent d'investigations criminelles, ou autres fonctions ordinaires de police. Par contre ils battent les citoyens, circulent dans des véhicules encombrées d'armes de gros calibre, tirent d'abord et questionnent après, et là encore seulement pour interroger le pauvre bougre tombé entre leurs mains sur ses présumées opinions et activités politiques. La police est non seulement asservie aux riches, mais arrêterait un citoyen sur la simple plainte d'un voisin jaloux, d'un amant abandonné, ou d'un paysan ambitionnant de posséder une plus grande quantité d'eau du canal d'irrigation ou la partie la plus fertile d'un lopin de terre. Le maintien de l'ordre est foncièrement personnel et politique, il n'est ni neutre ni objectif.
- La loi haïtienne prévoit des procédures d'arrestation, de détention, d'inspection et de gestion des prisons, mais toutes ces procédures et protections sont systématiquement violées. La plupart des arrestations ont lieu sans mandat. La personne arrêtée ignore, le plus souvent, la raison de sa détention. Souvent la famille ne sait pas où se trouve la personne ni si elle est détenue ou a été enlevée. En réalité, il n'y a aucune différence entre une arrestation sans mandat et un enlèvement. Sans laisser de trace, la personne disparaît dans les sombres lieux de détention officiels et officieux d'Haïti. D'une façon générale, ces centres ne gardent aucun registre comme requis par les lois haïtienne et internationale. Les centres officieux de détention sont évidemment illégaux. Par conséquent, le contact avec la famille, les avocats, le personnel médical, en résumé, avec le monde extérieur, est impossible. C'est précisément pendant ces longues périodes d'emprisonnement incommunicado que le détenu court le plus grand risque d'être torturé, battu ou tué.
- Les conditions dans les prisons haïtiennes et les centres de détention sont inhumaines et cruelles. Le plus souvent aménagées sur les ruines de garnisons construites par les forces d'occupation américaines 70 ans plus tôt et datant, pour certains, de l'époque coloniale du 18ème siècle, ces prisons ne disposent pas des services les plus rudimentaires: électricité, eau potable, toilettes, fournitures médicales. Même dans un pays aussi pauvre qu'Haïti où la population n'a pas accès à ces facilités, les prisons sont dans une situation encore plus déplorable. Les prisonniers sont gardés dans des cellules étroites, surpeuplées, et sont forcés de dormir à même le sol. Les femmes sont détenues dans les mêmes lieux que les hommes. Les abus sexuels sont courants; la tuberculose, le virus du SIDA et d'autres maladies sont facilement propagés. Les enfants sont détenus parmi les adultes. La loi haïtienne exige la détention des jeunes délinquants dans un centre distinct, mais cette loi, comme tant d'autres, n'existe que sur du papier. Un proverbe haïtien traduit cette attitude vis-à-vis du système légal: "*Konstitisyon se papye, bayonèt se fè*" (La constitution est faite de papier, les baïonnettes sont en fer).[Pour une analyse détaillée du système judiciaire haïtien, voir *Paper Laws, Steel Bayonets: la faillite du système judiciaire en Haïti* (Comité des Avocats pour les Droits Humains, 1990). Dans ce rapport est identifié plusieurs des problèmes relevés par le Groupe de Travail sur le système judiciaire de l'OEA/ONU.]

En dépit de ces problèmes urgents et des risques mortels encourus dans l'exercice de leurs fonctions, de braves juges, commissaires de gouvernement et avocats ont tenté d'accomplir leurs devoirs. Ils méritent, ainsi que tous les Haïtiens, un système judiciaire indépendant et impartial pouvant garantir le respect de leurs droits et punir les coupables. En cette période de transition démocratique, les réformes judiciaires s'avèrent indispensables. Pour démontrer la volonté du gouvernement à rompre définitivement avec un passé caractérisé par la règle du plus fort et de l'arbitraire, le gouvernement du Président Aristide, et principalement le Ministre de la Justice, devrait instaurer les réformes suivantes:

### Réformes à court terme

- Evaluer la compétence et l'indépendance de tous les commissaires de gouvernement en service actuellement, et remplacer ceux jugés inaptes ou qui furent nommés par les gouvernements illégaux, par des récents diplômés des écoles de droit haïtiennes. Ces nouveaux procureurs devraient suivre un recyclage intensif sur les rudiments de la procédure et de l'investigation criminelle, enseignée de préférence par des avocats haïtiens expérimentés et des procureurs français venant de préférence de la Martinique et de la Guadeloupe où l'on parle le créole, ou venant d'autres pays utilisant le Code Napoléon. Le droit humain international doit être l'un des piliers de cette formation.

L'expertise de spécialistes du bureau des Nations Unies sur la Prévention du Crime et la Justice Criminelle (dont le siège est à Vienne) devrait être aussi recherchée.

- Tous les juges devraient recevoir une formation rapide, fournie de préférence -- nous le répétons -- par d'anciens juges haïtiens, vivant en diaspora ou en Haïti, et par des juges français des antilles françaises dans la plus large proportion possible. Cette formation devrait d'abord viser les juges de paix qui côtoient le plus fréquemment la population haïtienne, mais qui sont les moins bien formés, et les plus mal équipés; elle devrait s'étendre ensuite aux juges d'instruction et aux juges de la cour d'appel. Le droit humain international devrait être le pilier central de cette formation.
- Les salaires de tous les officiers du système judiciaire devraient être ajustés en fonction de leur niveau de formation et de leurs expériences.
- Le gouvernement devrait solliciter aide et conseils du Programme des Nations Unies pour le Développement (PNUD), de l'USAID, et d'autres bailleurs de fonds, afin de renforcer le Ministère de la Justice. Ces programmes devraient inclure une formation du personnel du Ministère de la Justice sur la gestion, l'administration le maintien et le classement de la documentation .
- Les bailleurs de fonds devraient fournir l'équipement (ou les fonds) nécessaire au fonctionnement normal d'une cour judiciaire, pour faciliter par exemple la distribution aux juges et aux procureurs des codes élémentaires de droits: photocopieuses, véhicules, télécopieurs, et ordinateurs. Les fonds destinés aux paiements des salaires en cas d'urgence aux commissaires, aux juges et aux officiers du Ministère de la Justice, devraient être alloués de sorte que le système fonctionne normalement et que les Haïtiens vérifient l'engagement du gouvernement à réformer et à renforcer la justice.
- Le personnel des prisons -- géoliers, administrateurs et inspecteurs -- devrait être recruté et recevoir une formation intensive sur l'administration pénitentiaire. Le Ministre de la Justice devrait nommer un directeur général des prisons qui administre et supervise la transformation du système pénal haïtien. Tous les centres officiels de détention devraient être fermés. Un recensement de toutes les prisons devrait être complété et des registres indiquant le nom, le motif, la date d'arrestation et le statut judiciaire actuel des prisonniers devraient être établis. Tous les adolescents détenus dans les prisons haïtiennes devraient être libérés immédiatement et placés dans des centres appropriés. L'aide du Comité International de la Croix Rouge, du Bureau des Nations Unies sur la Prévention du Crime et la Justice Criminelle, et d'autres experts doit être sollicitée en vue d'entraîner le personnel des prisons, aider à établir des mécanismes de supervision et à fournir les services essentiels: eau potable, latrines, nourriture et médicament.
- Le gouvernement, en choisissant les membres de la nouvelle académie de police, doit réclamer comme critère principal de sélection la preuve que les applicants qui ont servi dans l'armée ou la police n'ont jamais ordonné, commis, toléré ou dissimulé des violations de droits humains. Autrement, tous les membres actuels des Forces Armées d'Haïti (FADH), doivent être présumés inaptes et non-qualifiés à servir le droit. Les membres des forces armées peuvent réfuter cette présomption en avançant des preuves venant des habitants des localités où ils ont servi ou des officiers du gouvernement, montrant qu'ils ont bien rempli leurs fonctions professionnellement et sans violence.
- Le gouvernement devrait lancer une campagne d'éducation populaire sur les droits humains et la justice qui informerait le peuple sur les démarches entreprises pour réformer et donner vie à la justice en Haïti. Tous les media doivent être utilisés, spécialement la radio. Le centre des droits humains des Nations Unies (dont le siège est à Genève) doit être prêt à offrir son expertise dans le domaine de l'éducation en droits humains.
- Les experts internationaux sur les conflits terriens doivent être immédiatement envoyés dans la Vallée de l'Artibonite pour entamer la tâche ardue d'établir la légitimité des titres de propriété; des ressources humaines et matérielles doivent être fournies au Tribunal Terrien de St. Marc afin de renforcer sa capacité de gérer les conflits terriens.

## Réformes à moyen terme

- La Commission de réforme des codes de Loi, dont le but serait de reviser et moderniser le droit haïtien, devrait commencer son travail aussitôt que possible. Cette commission, constituée de juristes haïtiens, devrait consulter des experts en droit de la France et d'autres pays où le Code civil est utilisé afin de s'assurer que le droit haïtien souscrit à toutes les conditions garantissant le respect des droits humains. Le Code d'instruction criminelle, en particulier, doit être révisée afin de clarifier qui est responsable des

investigations criminelles, et d'établir tant un temps-limite pour acheminer les rapports que les amendes prévues en cas de non-observance de ces obligations.

- Toutes les lois devraient être traduites en langue créole et les procès menés en créole si l'une des parties le requiert.
- Le gouvernement devrait établir un réseau national d'aide légale gratuite afin que les gens accusés de crimes graves puissent jouir de l'assistance légale. Ce système pourrait aussi permettre à des étudiants en droit ou à des fondés de pouvoir d'intervenir dans les cas moins sérieux au tribunal de paix, le tribunal de première instance qui tranche sur une large majorité de cas.
- Des codes régissant la conduite des avocats, juges, et commissaires de gouvernement, devraient être élaborés et adoptés; des procédures disciplinaires devraient être établies afin de déterminer les cas de violations du code de conduite et les sanctions appropriées à imposer.
- Les écoles de droit ont un besoin urgent de substantielles ressources. Les salles de classe sont dans un état déplorable et il n'existe pas de bibliothèque spécialisée en droit. Les professeurs doivent recevoir un salaire décent. Des normes pour la remise de diplômes et l'exercice de la profession doivent être établies et respectées.
- Une académie judiciaire doit être fondée afin de fournir la formation aux nouveaux juges et une formation professionnelle complémentaire aux juges déjà en fonction.
- Le gouvernement devrait créer de nouveaux postes de juges, spécialement au niveau des Tribunaux de Paix. Port-au-Prince ne compte que quatre tribunaux de paix pour une population d'au moins un million d'habitants; d'autres juridictions souffrent aussi de ces pénuries.
- Le Ministre de la Justice doit mettre sur pied une Cour Juvénile destinée à juger les cas impliquant les mineurs. Des centres offrant aux jeunes délinquants des programmes d'assistance psychologique, de réhabilitation, de formation et d'instruction, doivent être créés.
- Le gouvernement devrait encourager la création de différents mécanismes de "résolution de conflits" qui éliminent les délais et dépenses liés aux litiges ordinaires. Un grand nombre de conflits peut être résolu par l'arbitrage, la médiation et des conseils, tous des moyens mieux appropriés à un pays pauvre où la plupart des gens ne peuvent payer les services d'un avocat.

## Conclusion

L'intervention des forces armées multinationales, réalisée sous l'égide des Etats-Unis d'après la Résolution 940 du Conseil de Sécurité des Nations Unies (adoptée le 31 juillet 1994), a mis fin à la dominance de l'institution militaire sur le droit et la justice. L'opportunité d'accomplir des changements drastiques dans un système judiciaire désuet et méprisé n'a jamais été plus grande ni plus nécessaire. Les réformes proposées ci-dessus sont nécessaires à l'établissement d'un état de droit, mais elles ne suffisent pas. Les Haïtiens doivent radier définitivement l'ingérence de l'armée dans les tribunaux, la police et les prisons. L'application de ces réformes rendra encore moins plausible la possibilité que l'armée ou tout autre secteur puisse jamais détenir tant de pouvoir, et aidera les Haïtiens à gagner leur combat pour le respect du droit.

## A propos de l'auteur

William G. O'Neill, consultant de la *National Coalition for Haitian Rights* (NCHR), est l'auteur de ce rapport, qui est basé sur ses propres analyses et celles d'un Groupe de travail sur le système judiciaire qu'il a dirigé au profit de la Mission civile internationale (MICIVIH) de l'Organisation des Etats Américains et de l'Organisation des Nations Unies.

M. O'Neill était le directeur adjoint du Comité des Avocats pour les Droits Humains, avant de travailler pour la MICIVIH. Il est l'auteur et co-auteur de plusieurs rapports sur les droits humains, dont *Paper Laws, Steel Bayonets* (1990) qui est un examen détaillé de l'administration judiciaire en Haïti.

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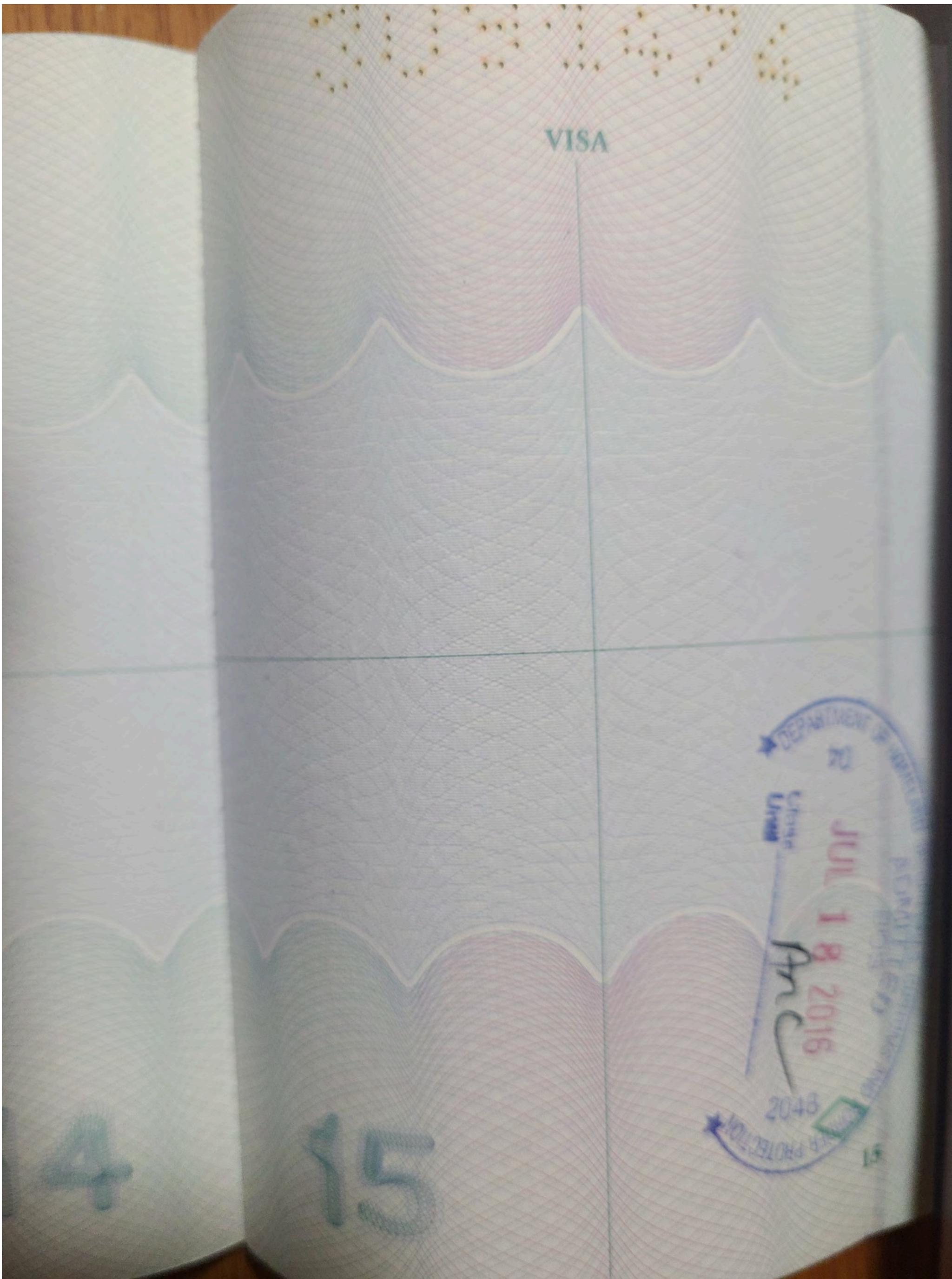
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Press Release, U.S. Dep't of the Treasury, Treasury Sanctions Serious Human Rights Abusers on International Human Rights Day (Dec. 10, 2020), <https://home.treasury.gov/news/press-releases/sm1208>

# U.S. DEPARTMENT OF THE TREASURY

## Treasury Sanctions Serious Human Rights Abusers on International Human Rights Day

December 10, 2020

### *Designations target human rights abusers in Haiti, Yemen, and Russia*

WASHINGTON— Today, on International Human Rights Day, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) is targeting perpetrators of serious human rights abuse across several countries in the Western Hemisphere, Middle East, and Eurasia. Today’s actions are taken pursuant to Executive Order (E.O.) 13818, which builds upon and implements the Global Magnitsky Human Rights Accountability Act, and targets perpetrators of serious human rights abuse and corruption. OFAC is also concurrently designating one Yemeni individual pursuant to E.O. 13611, “Blocking Property of Persons Threatening the Peace, Security, or Stability of Yemen.”

“As we recognize International Human Rights Day, the United States stands with innocent civilians around the globe who have been victims of violence and oppression,” said Deputy Secretary Justin G. Muzinich. “The United States also welcomes the growing ability of our partners to join us in targeting human rights abuses. Over the last few months, the United Kingdom and the European Union have each adopted new sanctions authorities, creating a powerful, global framework for targeting human rights abuses.”

## **SERIOUS HUMAN RIGHTS ABUSE IN HAITI**

Widespread violence and growing criminality by armed gangs in Haiti is bolstered by a judiciary that does not prosecute those responsible for attacks on civilians. These gangs, with the support of some Haitian politicians, repress political dissent in Port-au-Prince neighborhoods known to participate in anti-government demonstrations. In exchange for executing attacks designed to create instability and silence the Port-au-Prince population’s demands for improved living conditions, gangs receive money, political protection, and enough firearms to reportedly make them better armed than the Haitian National Police (HNP). In the November 2018 La Saline attack, at least 71 people were killed, over 400 houses were destroyed, and at least seven women were raped by armed gangs. Gangs removed victims, including children, from their

homes to be executed and then dragged them into the streets where their bodies were burned, dismembered, and fed to animals.

While serving as an HNP officer, **Jimmy Cherizier (Cherizier)** planned and participated in the 2018 La Saline attack. Cherizier is now one of Haiti's most influential gang leaders and leads an alliance of nine Haitian gangs known as the "G9 alliance." Throughout 2018 and 2019, **Cherizier** led armed groups in coordinated, brutal attacks in Port-au-Prince neighborhoods. Most recently, in May 2020, **Cherizier** led armed gangs in a five-day attack in multiple Port-au-Prince neighborhoods in which civilians were killed and houses were set on fire.

**Fednel Monchery (Monchery)** was the Director General of the Ministry of the Interior and Local Authorities and, while serving in this role, participated in the planning of La Saline. **Monchery** supplied weapons and state vehicles to members of armed gangs who perpetrated the attack. **Monchery** also attended a meeting during which La Saline was planned and where weapons were distributed to the perpetrators of the attack.

**Joseph Pierre Richard Duplan (Duplan)**, who was President Jovenel Moïse's Departmental Delegate at the time of La Saline, is accused of being the "intellectual architect" and was seen discussing the attack with armed gang members in the La Saline neighborhood during the violence. **Duplan** provided firearms and HNP uniforms to armed gang members who participated in the killings. **Duplan** also attended a meeting during which La Saline was planned and where weapons were distributed to the perpetrators of the attack.

**Cherizier, Monchery, and Duplan** are designated pursuant to the Global Magnitsky E.O. for being foreign persons responsible for or complicit in, or having directly or indirectly engaged in, serious human rights abuse.

## **SERIOUS HUMAN RIGHTS ABUSE IN YEMEN**

In Yemen, the country's various Houthi-controlled security and intelligence agencies have committed serious human rights abuse, engaging in the prevailing practice of the arbitrary detention and torture of its citizens. Students, women, human rights activists, journalists, humanitarian workers, perceived political opponents, and members of the Baha'i community have been targeted, illegally arrested, and mistreated in detention centers run by these various agencies, the National Security Bureau (NSB), the Political Security Organization (PSO), and the Criminal Investigation Department (CID). Under the direction of their leaders, the NSB and PSO

have been actively committing these abuses since late 2014, while the Sana'a CID has been doing so at least since 2018.

## SULTAN ZABIN AND ABDUL HAKIM AL-KHAIWANI

As the current Director of the Sana'a CID, **Sultan Zabin (Zabin)** and his CID officers have arrested, detained, and tortured women under the pretense of a policy designed to curb prostitution and organized crime. In reality, this policy was used to target politically active women who opposed the Houthis, and resulted in numerous reported cases of illegal arrest, arbitrary detention, enforced disappearance, sexual violence, rape, torture, and other cruel treatment utilized by the Sana'a CID against these women. **Zabin** was responsible for the implementation of this policy that was used as a tool for repression and violence. **Zabin** has had direct involvement in acts of rape, physical abuse, and arbitrary arrest and detention of women as part of a policy to inhibit or otherwise prevent political activities by women who have opposed the policies of the Houthis.

As a Houthi member and Deputy Minister of the Interior, **Abdul Hakim al-Khaiwani (Khaiwani)** was responsible for many detention facilities and security forces, including the Sana'a CID. The illegal arrest, detention, and torture of women conducted by the CID was done so under the ultimate authority of the Ministry of Interior. **Khaiwani** currently serves as the Director of the Security and Intelligence Service, Yemen's new security and intelligence agency that merged its predecessors, the PSO and NSB, in September 2019.

**Zabin** is designated pursuant to the Global Magnitsky E.O. for being a foreign person who is responsible for or complicit in, or has directly or indirectly engaged in, serious human rights abuse. **Zabin** is concurrently designated pursuant to E.O. 13611 for engaging in activities, directly or indirectly, that threaten the peace, security, or stability of Yemen.

**Khaiwani** is designated pursuant to the Global Magnitsky E.O. for being a foreign person who is a leader or official of an entity that has engaged in, or whose members have engaged in, serious human rights abuse relating to his tenure.

## ABDUL RAHAB JARFAN AND MOTLAQ AMER AL-MARRANI

**Abdul Rahab Jarfan (Jarfan)** is a Houthi member and the former Head of the NSB. Under **Jarfan**, the NSB systematically engaged in torture and abusive detention of Yemeni citizens.

During his tenure as a leader or official of the NSB, including his tenure as the Deputy Head of the NSB, **Motlaq Amer al-Marrani (al-Marrani)** oversaw detainees of the NSB, who were reportedly subjected to torture and other mistreatment by members of the NSB while detained. In addition, **al-Marrani** played a significant role in the arrest, detention, and ill treatment of humanitarian workers and other authorities working on humanitarian assistance and was also found to have abused his authority and influence over humanitarian access as leverage to generate personal profit.

**Jarfan** and **al-Marrani** are designated pursuant to the Global Magnitsky E.O. for being foreign persons who are leaders or officials of an entity that has engaged in, or whose members have engaged in, serious human rights abuse relating to their tenure.

## QADER AL-SHAMI

**Qader al-Shami (al-Shami)** is a Houthi member and the former director of the PSO. Since late 2014, the PSO has been responsible for the regular practice of illegal detention and torture of prisoners, including children. PSO officials were found to have been keeping detainees in undisclosed locations, subjecting them to torture, and not allowing them to communicate with their families, depriving them of their fundamental liberties. There have been at least 30 people reported to have been sentenced to death following their detention by the PSO. **Al-Shami** currently serves as the Deputy Director of the Security and Intelligence Bureau, a role he has occupied since the organization's inception in September 2019.

**Al-Shami** is designated pursuant to the Global Magnitsky E.O. for being a foreign person who is a leader or official of an entity that has engaged in, or whose members have engaged in, serious human rights abuse relating to his tenure.

## SERIOUS HUMAN RIGHTS ABUSE IN RUSSIA

**Ramzan Kadyrov (Kadyrov)**, the Head of the Chechen Republic, is being designated today pursuant to the Global Magnitsky E.O. for being a foreign person who is a leader of an organization, the Kadyrovtsy, that has engaged in, or whose members have engaged in, serious human rights abuses. Kadyrov and the forces he commands, commonly known as the Kadyrovtsy, are implicated in the murder of Boris Nemtsov, an opposition politician to Russian President Vladimir Putin, and other serious violations of human rights. On December 20, 2017, OFAC designated **Kadyrov** pursuant to the Russia Magnitsky Act for being responsible for extrajudicial killing, torture, or other gross violations of internationally recognized human rights



committed against individuals seeking to expose illegal activity carried out by officials of the Government of the Russian Federation, or to obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, expression, association, and assembly, and the rights to a fair trial and democratic elections, in the Russian Federation.

Following **Kadyrov's** previous designation, the Kadyrovtsy, under the guidance of **Kadyrov**, continued these egregious activities, to include kidnapping, torturing, and killing members of the LGBTI population in the Chechen Republic. The Kadyrovtsy are accused of illegal abductions, torture, extrajudicial executions, and other abuses, including the detention of journalists and activists.

In addition to **Kadyrov**, OFAC is designating the following six companies registered in Russia that continue to provide **Kadyrov** pride and significant profit:

- **Absolute Championship Akhmat** for being owned or controlled by **Kadyrov**.
- **Akhmat MMA** for being owned or controlled by **Kadyrov**.
- **FC Akhmat Grozny** for being owned or controlled by **Kadyrov**.
- **Akhmat Kadyrov Foundation** for being owned or controlled by **Kadyrov**.
- **Megastroyinvest, OOO** for being owned or controlled by the **Akhmat Kadyrov Foundation**.
- **Chechen Mineral Waters Ltd.** for being owned or controlled by the **Akhmat Kadyrov Foundation**.

OFAC is also designating five individuals who are prominent members in Kadyrov's network:

- **Vakhit Usmayev**, the Deputy Prime Minister of Chechnya, has acted or purported to act for or on behalf of, directly or indirectly, **Kadyrov**.
- **Timur Dugazaev**, a representative of **Kadyrov** in Europe, has acted or purported to act for or on behalf of, directly or indirectly, **Kadyrov**.
- **Ziyad Sabsabi**, a representative of **Kadyrov**, has acted or purported to act for or on behalf of, directly or indirectly, **Kadyrov**.
- **Daniil Vasilievich Martynov**, a personal security advisor for Kadyrov, has acted or purported to act for or on behalf of, directly or indirectly, **Kadyrov**.
- **Satish Seemar**, a horse trainer for **Kadyrov**, has materially assisted, sponsored, or provided financial material, or technological support for, or goods and services to or in support of, **Kadyrov**.

## SANCTIONS IMPLICATIONS

As a result of today's action, all property and interests in property of the persons above that are in the United States or in the possession or control of U.S. persons are blocked and must be reported to OFAC. In addition, any entities that are owned, directly or indirectly, 50 percent or more by one or more blocked persons are also blocked. Unless authorized by a general or specific license issued by OFAC, or otherwise exempt, OFAC's regulations generally prohibit all transactions by U.S. persons or within (or transiting) the United States that involve any property or interests in property of designated or otherwise blocked persons. The prohibitions include the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any blocked person or the receipt of any contribution or provision of funds, goods, or services from any such person.

## GLOBAL MAGNITSKY

Building upon the Global Magnitsky Human Rights Accountability Act, the President signed E.O. 13818 on December 20, 2017, in which the President found that the prevalence of human rights abuse and corruption that have their source, in whole or in substantial part, outside the United States, had reached such scope and gravity that it threatens the stability of international political and economic systems. Human rights abuse and corruption undermine the values that form an essential foundation of stable, secure, and functioning societies; have devastating impacts on individuals; weaken democratic institutions; degrade the rule of law; perpetuate violent conflicts; facilitate the activities of dangerous persons; and undermine economic markets. The United States seeks to impose tangible and significant consequences on those who commit serious human rights abuse or engage in corruption, as well as to protect the financial system of the United States from abuse by these same persons.

[View more information on the individuals and entities designated today.](#)

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Public Statement, Amnesty Int'l, Haiti: Obliterating Justice, Overturning of Sentences for Raboteau Massacre by Supreme Court Is a Huge Step Backwards (May 26, 2005), <https://www.amnesty.org/ar/wp-content/uploads/2021/08/amr360062005en.pdf>

# AMNESTY INTERNATIONAL

## Public Statement

AI Index: AMR 36/006/2005 (Public)  
News Service No: 142  
26 May 2005

**Embargo Date: 26 May 2005 01:01 GMT**

## **Haiti: Obliterating justice, overturning of sentences for Raboteau massacre by Supreme Court is a huge step backwards**

On 3 May 2005, the Supreme Court of Haiti (Cour de Cassation) quashed the sentences of 15 former militaries and members of the paramilitary organization FRAPH (Front for the Advancement and Progress of Haiti) for their involvement in the 1994 Raboteau massacre.

Amnesty International believes that the arguments the Supreme Court presented to overturn these sentences are contrary to the Haitian Constitution and that the Supreme Court, by basing its ruling on the law of 29 March 1928, denies the primacy of the Constitution.

None of the fifteen men were in prison when their sentences were quashed, since one was deceased and the others had reportedly escaped from prison. They had been convicted on 9 November 2000 following a six week trial by jury at the Criminal Tribunal of Gonaïves. They were sentenced to terms ranging from four years to life imprisonment in a trial that was observed by national and international monitors, including officials from the United Nations International Civilian Support Mission in Haiti (MICAH). The UN Special Rapporteur and Independent Expert on Haiti in 2000, Mr. Adama Dieng, qualified the trial as a “landmark for justice in Haiti” and welcomed the fairness and transparency of the trial. The jury’s verdict was confirmed by the Supreme Court on 17 November 2000.

A further thirty-seven defendants who had left the country failed to appear for trial and were convicted in absentia by the trial judge on 16 November 2000 and sentenced to life imprisonment.

The Supreme Court ruling of 3 May 2005 argues that the Criminal Tribunal of Gonaïves, having been established with the assistance of a jury, was not competent to rule the case and therefore quashed the verdict of the Tribunal. To reach this decision, the Supreme Court used article 3 of the 29 March 1928 law (1).

Amnesty International is concerned that the Supreme Court’s ruling of 3 May 2005 is politically motivated since the use of the 29 March 1928 law to quash the trial sentence appears to be in contradiction of the Constitution (2). The organization believes that this constitutes a major setback in the fight against impunity in Haiti and a major obstacle for the victims’ families to obtain redress. Given the current political situation in Haiti and the high degree of insecurity, it is most unlikely that witnesses would come forward to testify again if there is another trial for the Raboteau massacre.

Amnesty International is further concerned that another high ranking military officer implicated in the Raboteau massacre could soon be released. On 16 November 2000, 37 high-ranking members of the

military were convicted in absentia and sentenced to life in prison for their involvement in the massacre. Among them was former paramilitary FRAPH second-in-command, Louis-Jodel Chamblain, who was re-tried on 16 May 2005 and is currently in custody awaiting verdict. The Supreme Court ruling of 3 May 2005 did not apply to those tried in absentia because they were judged without the assistance of a jury.

### **Background Information**

Raboteau is a heavily-populated shanty town in Gonaïves, Artibonite department. Throughout the period of the de facto military government, from 1991 to 1994, it was particularly targeted for repression by the army and paramilitary because of its activist past and the strong support of its inhabitants for ousted president Jean-Bertrand Aristide. As a result of a joint military and paramilitary operation an estimated 20 people lost their lives between 18 and 22 April 1994 after they were surrounded and attacked. Homes were sacked and burned, and men, women and children beaten.

Regarding the 37 who were tried in absentia, the US Government deported to Haiti two former colonels, Carl Dorélien and Hébert Valmond, and Jean-Claude Duperval, a former deputy commander in chief of the army, but they escaped from the National Penitentiary on 29 February 2004. Jean Pierre, alias Jean Tatoune, also escaped in August 2002. The previous government and the current interim government have not made any apparent effort to apprehend the escapees.

1. Article 3 of the law of 29 March 1928: “In the case of related offences, as stipulated in article 113 of the Code of Criminal Instruction, as well as in cases when the offences have been committed by the same individual, if one of the offences is qualified a crime, the Investigating Judge who rules on the matter, will refer the case by a single decision to a criminal court, which will try and rule without assistance of a jury.”
2. Constitution of Haiti, Article 296: “All Codes of Law or Handbooks of Justice, all laws, all decree laws and all decrees and orders (Arrêtés) currently in force shall be maintained in all matters not contrary to this Constitution.” [The English translation of the 1987 Constitution is taken from Gisbert H. Flantz, *Constitutions of the countries of the world. Haiti, 1987 Constitution.*]

Rapport de Plainte (Feb. 13, 2012) [Plaintiffs\_0000087-89]

# Rapport de Plainte.

Je suis Boniface David, du département de la Grand-Anse de la Commune des Irois. Je raconte mon histoire aux Irois, dans les Départements et même dans le pays. Le vendredi 27 juillet 2007, pendant que le Maire Jean Morose Villié était dans la rue avec ses voisines pour le propretagage de la ville rencontrait une dame appelée Oslanie Mersieur qui profite la présence des vaires pour rassembler les ordures que les marchandes ont laissées à la portée de sa maison le marie est indigné de ce que faisait la dame il l'a saufflétée, à ce moment là le nissage Martyr reprochait l'action malonette faite par le maire, en plaignant le juge Bell St-Jean en racontant le juge comment déroulait la chose entre le maire et la citoyenne, le maire se sent ce n'est pas fini de punir cette citoyenne allait chez le juge, demandait au juge Bell d'aller d'arrêter Ostanie disant que la dame lui faisait du mal et tout ça arrivait parce que cette citoyenne n'est pas l'une de ses patisans politique vraiment le juge accordait la demande du maire en ce temps là tous et toutes les citoyennes et citoyens voulaient écouter la déclaration de la damme dessandaient chez le juge de paix de là étant moi enguse citoen mais j'étais en 1<sup>ère</sup> année de la formation RNDDH Réseau national des defenses des droits humains, avec une vitesse exagérée il se tenait debout en me pointant le doigt en demandant le juge de m'envoyer, le juge lui demandait pourquoi envoe-je Boniface David ? Il lui répondait comme on entend parler de lui comme un agent des droits humains, je ne reconnais pas ce droit ici et il demandait au juge de me demander de m'identifier comme un agent des droits humains, le juge me demandait ça et je m'identifie avec une carte du seminaire de la 1<sup>ère</sup> année formation RNDDH et à ce moment là je demandait la parole au juge en disant je crois que tout le monde a des droits qui se divisent en 2 parties : Civiles et politiques et c'est à cause ces droits là que le Maire en a qu'il devienne notre Maire aujourd'hui, en ce temps là il me regardait avec un mauvais signe et j'ajoute c'est parce que le maire ne respecte pas le droit des hommes qu'il arrive de sauffleter la citoyenne Ostanie, le même temps là le Maire se levait allait dans la rue et revenait en me demandant qui t'a donné le droit de parler dur comme ça ? ma réponse c'était tout homme a le droit de s'exprimer librément d'après l'article 28 de la constitution de la République d'Haïti du 29 mars 1987 en ce temps là il se sentait une fois de plus et dans son absence le juge me demandait d'aller parce que le retour du Maire ne serait plus bon pour moi, je fesai un acte d'obéissance il faut que j'aïlle, en sortnt de la maison du juge une damme vient me rencontrer pour lui raconter l'évènement en faisant ça l'un des partisans du maire qui se nomme Bell Jean-Louis le neveu du Juge. Bell vient me juffer et brusquement j'étais entouré par le maire et ses patisans pour me tuer et Jean-Louis Bell me declarait si c'était Matador (une autre zone de la ville) il me déjà tué et par la suite je rencontrais quelques patisans politique et des parents des mes élèves qui me délivraient des mains de ces gens, mes proches m'accompagnent jusqu'à la maison de nissage Martyr, là les patissant du maire et le maire me fesaient rage grâce a mes proches ont me pagnés encore après toutes ces choses l'un des patisans du maire lui regarde et le maire répondit laisse le nous le réglerons plus tard, de là étant il avait une vide entre 10ham-5hpm et à 5h30 moi je voyais venir le maire dans la zone ou j'habite il était en pour parler avec l'un de ses patisans en chichotant à l'oreille mais à la fin il disait : « Koull 6h tout moun fèmen pot, yo komanse re(n chimè y'ap fin rele n chimè nèt aswè-a pa gen moun k'ap mande chans pou pèsonn » ces paroles me font découvrir un anbuscade mais comme une telle chose pareille n'était jamais arrivée avant, je ne donnais une grande importance a cela.

MINUSTAH OIDSRSRG  
Received on

13 FEB. 2012

*R. Williams*

Toute suite après sa déclaration il retournait chez lui et il retourne la zone à 6h45mn avec ses patisants lourdement armés ses kepis de face contre derrière. Puisque je suis chrétiens j'allais au service du soir et mon frère cadet dit Eclesiaste Boniface restait à la maison.

Temoignages des gens par l'interrogatoire du juge aux environs 7hpm ils ont dessendus de Matador et les gens de la zone Grand-Bassin là où l'action déroulait entendaient que le maire m'appelait, il n'est pas là dit mon frère cadet ils lui ont fait réplique s'il n'est pas là nous lui apportons quelque chose vient recevoir les pour lui, en venant mon frère ils ont lancés des Pierres sur la maison, pendant que mon frère fait la découverte de <sup>ce</sup> s'agit les choses qu'ils m'appartaient il voulait l'échapper mais ils ont mis les mains sur ce pauvre gar en tirant par balle derrière sa tête, dans le dos et plusieurs coups d'armes blanches sur son corp. Le même moment ils se rendaient à l'église où j'étais en service pour me tuer et pour m'échapper de ces gens là je faisais échange vêtements avec le pasteur de cette Eglise de Dieu de la ~~parole~~ côte. ( Pasteur Jean-Grégory Bourdeau Télé : 3697-8441. c'est à la maison du pasteur je passais toute la nuit avec ma famille tandis que mon frere restait par terre jussqu'au demain matin. Ce sont des bons samaritains qu'il lui veille pour que le chien ne lui déchirait pas. Les gens entendaient dire le maire et l'unde ses partisans nomme Savar Pierre pas encore tuer. Le lendemain samedi 28 juillet à 7 heures am. le proces verbal de constat du décès est redige par le juge Bell Saint-Jean assiste du juge Cahrls Gerald et du greffier Lorenard Wilfrid. J'ai photos pour toutes ces personnes cités et meme pour la population qui observait, au cours de l'interrogatoire du juge il trouvait un jeune homme sous le nom de Felix qui blessait gravement couche à l'hospital des Irois pendant que le juge lui posait des questions il disait il ~~il~~ rentrait à l'hospital à 11 heures am. tandis que mon frere mort aux environ 7 heures pm. Il declarait par la suite c'était le moment que les bandits agissaient sur mon frere il voulait echapper mon frere il la recu un coup d'arme blanche. Puisque le maire constatait que les paroles de Felix lui s'engagent le maire renvoyait Felix dans un autre hospital dans le sud. Cela augmente l'indignation de la population elle prenait mon frere et apportait à la mairie. Le bandit qu'est le maire il faisait nous pietiné par la police et me frappais par un ~~fil~~ pour retourner avec mon frere puis l'enterrer pendant que je pleinais amerement le délégué Departemental me disait boniface ne pleut pas enterre ton frere et je reglerai ton affaire parce que je vois comment se deroule les choses. Je l'enterrait et le juge ne faisait pas meme une arrestation. La raison il a beaucoup d'eux de sa famille implique dans cette action criminelle. Le meme jour là je laissais et miraculeusement échappé, réfugié à l'Anse-D'Ainault la commune voisine, de cette ville là à Jeremie Georges Simond, Altemas, Amosdia et Polemon Michel me persecutent et c'est là je devais faire suivi à la justice ~~de~~ Jérémie, Je rentrais à Port-au-Prince avec ma famille toujours sous la couverture. Apres beacoup de plaintes à la radio, la television ( denociation) le juge d'instruction de Jeremie Frank Drice a arrêté le maire il faisait 2 mois, 9 jours en prison apres quoi le meme juge lui relache à titre de reprendre-Pour nos jours. En arrivant à Port-au-Prince, moi boniface David, Jesula boniface et Micheline Lazarre, ma fiancée nous echappons miraculeusement sous les mains du maire Jean-Morose Villiena, Vilème Duclona, Amos dia et quelques autres bandits inconnus de visage pour moi. Apres une longue durée je essayais de retourner dans ma ville natale le 14 octobre 2008 parce que la vie par ~~et~~ pour nous difficile comme toujours (maintenant) le meme soir les bandits ont debaarques sur nous. J'echappais de justesse par une voisine. Aussitôt que ma mère a pris cette nouvelle elle perd la vision parce que cela l'apporte en tête. Apres avoir



subit cete situation j'allais denoncer la situation malhonnete le 23 octobre 2008 a la radio. Ils me cherchent lourdement armes ouvertement, gros la journée parce qu'ils sont des membres du parti politic LAVALAS, KOREGA, LESPWA et moi de l'OPL. 29 Octobre 2009, ~~des~~ bandits incendie 36 maisons sans echappée la maison de ma famille avec tous ce que nous possedons vetements, pieces etc. RNDDH qui justifiait la persecution de ma famille apres avoir porte plainte tant au niveau national et international m'aider a trouver une subsistance d'argent en mars 2009, pasdesuivi. Le 8 janvier 2012, moi, ma petite sœur Jesula Boniface et ma fiancée Micheline. Nous allions voir mon père du cote de Jorque en dehors de la ville des Irois pour une raison de santé. Les bandits nous decouvrent .Ils nous ~~gros~~ <sup>gros</sup> rage en nous declarant. Ce jour-ci nous ne pouvons echapper par justesse. Il faut que nous mourir quand meme. A ce moment j'allais plaainte au juge de paix de la commune, il s'appelle Agnel Roméus, il profite l'occasion de me faire savoir qu'il est impuissant de me garder en securite par rapport a les bandits. Il me donne un document signe par la police pour les autorites nationaux comme internationaux m'aident a trouver un abrit sur. Apres tout demarche legal faisait aupresdes institutions comme : ~~la~~ justice, la police, des droits humains nationaux et internationaux . je ne trouve de ~~sak~~ <sup>sak</sup> utations a la situation de ma famille, de la persecution que nous ayons, puis je suis impuissant de poursuivre a la justice cause les bandits qui me cherche au jour le jour a tuer vous trouvez tous les demarches déjà effectues dans la chronologie des plaintes deposees avec photographies. Puisque dans une telle situation la justice qui mieux placee pour faire respecter la loi est impuissant, la police agent de l'ordre est impuissante ainsi comme moi et ma famille nous sommes plus impuissant devant un tel car. Pour epargner notre vie de cette situation nous aider a trouver d'asile dans un autre pays <sup>qui</sup> peut nous tenir en securite. Nous demandons tout ca d'apres l'article 57 de la Constitution de la Republique d'Haiti du 29 mars 1987. disant : Le droit d'asile est reconnu aux refugies politiques.

My phone :38358960

En vous priant de donner a cette *naration une suite legale.*

- Signe :Boniface David *Boniface David*  
 Boniface Jesula *Boniface Jesula*  
 Boniface Salnave *Boniface salnave*  
 Boniface Kervens *Boniface Kervens*  
 Madame Boniface Salnave *Madame Boniface Salnave*  
 Lazarre Micheline *Lazarre Micheline*  
 Louis Mirlande *Louis Mirlande*  
 Davil Emmanuel *Davil Emmanuel*  
 Clerger Philismar *Cleger Philismar*  
 Boniface Belicia *Boniface Belicia*  
 Boniface Lalane et tous les autre enfants de la famille

Réseau Nat'l de Déf. des Droits Humains, *Etude sur les conditions générales de travail des composantes de la chaîne pénale haïtienne* (2019), <https://web.rnddh.org/wp-content/uploads/2019/03/2-Rap-études-sur-les-conditions-de-travail-des-acteurs-de-la-chaine-pénale-21Mar19.pdf>

**Réseau National de Défense des Droits Humains  
(RNDDH)**

Membre de la  
**fidh**

***Etude sur les conditions générales de travail  
des composantes de la chaîne pénale haïtienne***

21 mars 2019



**Partie III****Résultats spécifiques de l'étude**

<b>Accession au poste</b>	<b>Nombre</b>	<b>%</b>
Appel à candidature	6	3
Autres (performance - expérience - nomination directe - EMA - Promotion)	43	21.5
Compétence et ancienneté	1	0.5
Concours	59	29.5
Contact	26	13
Recommandations	9	4.5
Stage	25	12.5
Sans réponse	31	15.5
<b>Total</b>	<b>200</b>	<b>100</b>

**Tableau 10**

68. De plus, 86.5 % de la population totale touchée ont affirmé que l'effectif de leur service ou de leur unité n'est pas du tout suffisant.

**2. Sur les conditions de travail**

69. Cent-soixante-quatre (164) répondants-tes soit 82 %, ont affirmé avoir été nommés-es dans la fonction publique contre quinze (15) qui sont des contractuels-les et douze (12) autres qui sont détenteurs-trices d'un mandat. Neuf (9) répondants-tes n'ont pas fourni d'information à ce sujet.

<b>Nommés dans la fonction publique</b>	<b>Contractuels</b>	<b>Détenteurs d'un mandat</b>	<b>NRP</b>
164	15	12	9

**Tableau 11**

70. Cent quarante-deux (142) répondants-tes représentant 71 % ont affirmé avoir reçu un descriptif de tâches contre trente (30), soit 15 % qui n'en ont jamais reçu. Vingt-huit (28) répondants-tes, soit 14 % n'ont pas répondu à la question.

71. Cent-soixante-douze (172) répondants-tes soit 86 %, ont affirmé que le salaire reçu ne leur permet pas de répondre à leurs besoins. Conséquemment, ils-elles sont favorables à une augmentation salariale. Seuls quatorze (14) répondants-tes, soit 7 % croient que leur salaire est suffisant. Quatorze (14) autres soit 7 % n'ont pas répondu à la question.

72. Cent-soixante-deux (162) répondants-tes, soit 81 % ont affirmé recevoir régulièrement leur salaire contre trente-huit (38) soit 19 % qui ont avancé le contraire. De plus, la différence qui existe entre les salaires est très élevée même pour un même poste occupé. Le tableau suivant présente les tranches de salaire par employé-e de la chaîne pénale :

**Partie III**  
**Résultats spécifiques de l'étude**

<b>Postes occupés</b>	<b>Minimum</b>	<b>Maximum</b>
Greffiers	20.600	
Hoquetons	9.000	
Archivistes	11.000	
Brigadiers au sein des tribunaux	19.000	27.000
Agents de sécurité	13.000	
Agents de la PNH	22.792	35.000
Commissaires de police	52.000	
Commis-parquets	19.000	
Ménagers-ères	6.780	9.000
Secrétaires	10.000	17.000
Juges de paix	48.480	54.580
Commissaires du gouvernement et substituts	47.960	
Juges et Doyens des TPI	30.070	47.000
Agents de la DAP	25.000	45.000

**Tableau 12**

73. Selon les répondants-tes, la grille salariale prend en compte l'ancienneté des employés-es. De plus, ces informations ne présentent pas à proprement parler la situation générale puisqu'il peut y avoir des employés-es qui pour les mêmes postes, perçoivent des salaires plus ou moins élevés que ce qui est indiqué dans ce tableau.

74. Par ailleurs, seize (16) des répondants-tes, représentant 8 % ont affirmé avoir reçu au cours des douze (12) derniers mois, une prime de leur institution contre cent-cinquante-sept (157) soit 78.5 % qui ont affirmé n'en avoir jamais reçu. Vingt-sept (27) soit 13.5 % n'ont pas répondu à la question. Tous les répondants-tes qui ont reçu des primes de leur institution sont des cadres : juges de paix, juges de siège, agents policiers haut placés, etc.

75. De rares répondants-tes ont affirmé avoir reçu une prime de cinquante mille (50.000) gourdes pour la réouverture des classes. Ils-elles ont cependant souligné qu'il ne s'agit pas d'une prime régulière. D'autres ont confié avoir reçu des privilèges liés à leurs fonctions. Parmi ces privilèges ils-elles citent : des cartes de débit, des cartes de téléphonie et des fiches pour l'achat de carburant.

76. Un seul répondant a avoué avoir reçu une prime d'un particulier. Hormis celui-ci, tous les répondants-tes ont affirmé n'avoir jamais rien reçu de particulier.

77. Cent cinquante-sept (157) répondants-tes, soit 78.5 %, fournissent en moyenne huit (8) heures de temps par jour contre vingt-deux (22) représentant 11 % qui travaillent sur la base d'un horaire rotatif. Ces derniers-ères sont pour la plupart agents de la DAP et agents de la police administrative. Ils-elles travaillent jusqu'à douze (12) heures par tour, ce qui est jugé fatigant par eux-elles. Vingt-et-un (21) n'ont pas répondu à la question.

78. Cent quarante-deux (142) répondants-tes, soit 71 % n'ont aucune autre activité professionnelle rémunérée contre quarante-deux (42) soit 21 % qui ont affirmé en avoir. Seize (16) d'entre eux-elles,

**Partie III****Résultats spécifiques de l'étude**

soit 8 %, n'ont pas voulu répondre à cette question. Il s'agit, pour ceux et celles qui ont répondu Oui à cette question, d'activités liées à l'enseignement, à l'élevage, au jardinage, au transport en commun et au commerce. De même, *cent-vingt-sept* (127) répondants-tes, représentant 63.5 % ont affirmé n'avoir aucune autre source de revenus contre *cinquante-huit* (58) -29 % - qui en ont. Il s'agit entre autres de : maison en loyer, revenus de leurs conjoints-tes, parents à l'étranger, etc. Quinze (15) n'ont pas répondu à la question.

79. Pour plusieurs répondants-tes, la révision salariale date de plus de dix (10) ans. Pour d'autres, elle date de l'année dernière. *Cent soixante-dix-sept* (177) répondants-tes - 88.5 % - ont affirmé être en faveur d'une augmentation salariale, arguant pour la plupart qu'une augmentation pourrait améliorer leur efficacité au travail. A contrario, *sept* (7) répondants-tes représentant 3.5 % d'entre eux – elles, estiment que le salaire octroyé est équitable même s'ils-elles sont favorables à sa révision.

80. *Cent-soixante-seize* (176) représentant 88 % des répondants-tes estiment que les matériels mis à leur disposition ne sont ni suffisants ni adéquats contre *dix* (10) soit 5 % qui jugent le contraire. *Quatorze* (14) - 7 % - n'ont pas répondu à la question. Ceux et celles qui les ont estimés insuffisants et inadéquats ont dressé une liste de *six* (6) catégories de matériels indispensables à l'amélioration de leur efficacité. Il s'agit de :

**a) Matériels d'intervention policière**

- Gaz lacrymogène
- Bâtons
- Boucliers
- Gilets pare-balles
- Cartouches
- Uniformes
- Bottes
- Armes à feu

**b) Moyens de déplacement**

- Motocyclettes
- Véhicules

**c) Matériels de nettoyage**

- Serpillère
- Seaux
- Produits nettoyants et désodorisants
- Cache-nez
- Gants
- Lunettes de protection

**d) Matériels de bureau**

- Chaises
- Machines à taper

### Partie III

#### Résultats spécifiques de l'étude

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- Classeurs
- Climatiseurs
- Ordinateurs (éventuellement des ordinateurs portables qui n'exigent pas trop d'énergie)
- Imprimantes
- Plumes
- Cahiers
- Photocopieuses

#### e) Source d'énergie

- Modulateur de courant électrique
- Panneaux solaires
- Génératrice
- Batteries

### 3. Sur la couverture sociale des employés de la chaîne pénale

81. Selon les informations recueillies :

- 78.5 % des répondants-tes croient avoir droit au congé annuel contre 3 % qui estiment ne pas y avoir droit et 1 % qui n'en savent rien. 17.5 % n'ont pas répondu à la question.
- 45 % des répondants-tes estiment avoir droit au congé parental ou de maternité contre 16 % qui croient le contraire, 5 % qui ne savent pas et 24 % qui n'y ont pas répondu.
- 67 % des répondants-tes ont affirmé avoir droit au congé-maladie contre 9 % qui n'y ont pas droit, 1.5 % qui ne savent pas et 22.5 % qui n'y ont pas répondu pas.
- 58.5 % des répondants-tes ont droit au congé pour accident de travail contre 8 % qui n'y ont pas droit. 6 % ne savent pas et 27.5 % n'ont pas répondu à la question.
- Seuls-les 13 % des répondants-tes ont affirmé avoir droit au congé sans solde, contre 31 % qui pensent ne pas y avoir droit, 10.5 % qui ne savent pas et 45.5 % qui ont choisi de ne pas répondre à la question.
- 45.5 % des répondants-tes sont couverts-tes par une assurance en invalidité contre 13 % qui ne sont pas couverts. 5.5 % ne savent pas et 36 % n'ont pas répondu à la question.
- 50.5 % des répondants-tes sont couverts-tes par une assurance-médicaments contre 30.5 % qui ne sont pas couverts-tes, 8.5 % qui ne savent pas et 38 % qui n'ont pas voulu répondre à la question.
- 58 % des répondants-tes sont couverts-tes par une assurance-vie contre 27 % qui ne le sont pas, 6.5 % qui ne savent pas s'ils-elles sont couverts-tes ou non et 8.5 % qui n'ont pas répondu à la question.



Réseau Nat'l de Def. des Droits Humains, *Fonctionnement de l'appareil judiciaire haïtien au cours de l'année 2018-2019* (2019), <https://web.rnddh.org/wp-content/uploads/2019/10/4-Rap-Justice-15Oct2019.pdf>

# Réseau National de Défense des Droits Humains (RNDDH)



## Fonctionnement de l'appareil judiciaire haïtien au cours de l'année 2018-2019

15 octobre 2019



## *Résumé*

1. Au cours de l'année 2018-2019, le Réseau National de Défense des Droits Humains (RNDDH) et ses structures régionales ont observé le fonctionnement de l'appareil judiciaire haïtien. Ils présentent aujourd'hui, leur rapport circonstancié.

2. Les faits d'actualité judiciaire, les scandales qui ont jalonné l'année judiciaire couverte par ce rapport, les conditions de travail de certains tribunaux de paix du pays ainsi que les assises criminelles avec et sans assistance de jury réalisées pour la période concernée, ont retenu l'attention du RNDDH et de ses structures régionales. L'impact des réalisations judiciaires sur la détention préventive prolongée a été analysé. Enfin, l'état d'avancement des différents dossiers en souffrance par devant l'appareil judiciaire haïtien, a été passé en revue.

3. Les assises criminelles avec et sans assistance de jury se sont tenues dans 16 des 18 juridictions de première instance du pays. 693 dossiers ont été entendus. 616 verdicts ont été rendus. 720 personnes ont été jugées, 412 condamnées, 231 libérées et 77 personnes ne sont pas encore fixées, leur verdict n'étant pas encore rendu. Parmi les personnes jugées en assises criminelles avec et sans assistance de jury, seules 29 sont des femmes, ce qui représente 4.51 %. 122 détenus sont retournés en prison parce que leurs dossiers ont été renvoyés. De plus, 78 individus ont été condamnés pour crimes sexuels dont 14 perpétrés sur mineures.

4. Ces audiences additionnées aux autres réalisations de l'année judiciaire ont fait passer le taux de détention préventive de 74.57 % à 72.37 %, soit une diminution de 2.19 %.

5. L'année judiciaire 2018-2019, marquée par de nombreuses périodes de dysfonctionnement, a été particulièrement difficile en raison de la situation sociopolitique du pays, des différents mouvements de grève ainsi que les arrêts de travail observés par des greffiers-ères, des huissiers-ères, des magistrats-tes et des avocats-tes. Elle s'est donc déroulée dans un contexte d'incertitude et d'insécurité généralisée, ce qui a ralenti énormément les activités. C'est pourquoi, le RNDDH et ses structures régionales estiment que les autorités judiciaires ont gagné le pari de réaliser certaines activités judiciaires ainsi que les audiences criminelles avec et sans assistance de jury. Cependant, les efforts pour combattre l'impunité et la détention préventive prolongée n'ont pas été suffisants, tenant compte du nombre de dossiers ayant marqué l'actualité judiciaire lors des années antérieures et pour lesquels aucune avancée n'a été enregistrée.

6. Pour l'année judiciaire 2019-2020, le RNDDH et ses structures régionales recommandent aux autorités concernées de :

- Porter les magistrats instructeurs à travailler selon l'ordre d'arrivée des dossiers ;
- Porter les doyens des tribunaux de première instance à distribuer les cas en tenant compte du nombre de dossiers en cours d'instruction dans les cabinets ;
- Intensifier les audiences correctionnelles et criminelles ;
- Rendre fonctionnels tous les tribunaux de paix ;
- Rendre fonctionnelle l'inspection judiciaire du CSPJ ;
- Donner suite aux recommandations du CSPJ de renouveler les mandats des magistrats ;
- Donner suite aux revendications des magistrats-tes, des greffiers-ères et des huissiers-ères.

## I. INTRODUCTION

1. L'année judiciaire 2018-2019 a été déclarée ouverte le 1<sup>er</sup> octobre 2018.
2. Au cours de celle-ci, le *Réseau National de Défense des Droits Humains* (RNDDH) et ses structures régionales ont observé le fonctionnement de l'appareil judiciaire haïtien, en mettant l'accent sur le travail de ses différentes composantes particulièrement les tribunaux de paix et de première instance et en suivant les dossiers ayant défrayé la chronique judiciaire.
3. Aujourd'hui, à l'occasion du début des travaux judiciaires pour l'année 2019-2020, le RNDDH et ses structures régionales se proposent de partager avec tous ceux que la question intéresse, leurs différentes observations.

## II. DEROULEMENT GENERAL DE L'ANNEE JUDICIAIRE 2018-2019

4. Le 1<sup>er</sup> octobre 2018, la cérémonie d'ouverture officielle de l'année judiciaire 2018-2019 a été réalisée à la *Cour de Cassation*, en présence de plusieurs hauts dignitaires. D'autres instances de l'appareil judiciaire dont certaines cours d'appel et plusieurs tribunaux de première instance du pays ont par la suite organisé de leur côté des cérémonies lançant la reprise des travaux judiciaires dans leur juridiction respective.
5. Des recommandations ont été faites, des engagements ont été renouvelés par les autorités judiciaires et des promesses ont été prononcées en vue d'œuvrer pour le respect des droits aux garanties judiciaires, au cours de la nouvelle année.
6. Au lendemain de cette série de cérémonies, l'année judiciaire a démarré sur fonds de préoccupations et de crises sociopolitiques. En effet, dans la nuit du 4 au 5 octobre 2018, l'appareil judiciaire a pleuré le départ de la Juge Ostwalde JOSEPH jadis affectée au tribunal de première instance de *Port-au-Prince*. Elle a perdu la vie tragiquement lors des intempéries ayant frappé le département du Nord-est. Elle s'apprêtait à participer aux fêtes patronales de *Notre Dame du Rosaire* à *Mont-Organisé* lorsque son véhicule a été emporté par la rivière Kanari de *Ouanaminthe*.
7. Par ailleurs, le 5 octobre 2018, Louis Jodel CHAMBELAIN a été invité à se présenter au parquet près le tribunal de première instance de *Port-au-Prince* suite à ses déclarations dans des stations de radio de la capitale, faisant état de la préparation d'un coup d'Etat contre le pouvoir en place. Le 9 octobre 2018, c'est au tour de Schiller LOUIDOR, militant de l'organisation politique *Fanmi Lavalas*, d'être convoqué pour avoir tenu des propos violents sur les ondes d'une station de radio de la capitale. En effet, dans une entrevue, il a affirmé qu'une opération dénommée « Remise de clés » avait été lancée par l'opposition politique dans le but d'investir le palais national.
8. Le jour de la convocation de Schiller LOUIDOR, le parquet près le tribunal de première instance de *Port-au-Prince* a sollicité de la Direction départementale de l'Ouest de la *Police nationale d'Haïti* (PNH) une présence policière accrue en vue de renforcer la sécurité du parquet. Le commissaire divisionnaire Berson SOLJOUR, alors directeur départemental de l'Ouest, a décidé de se charger personnellement de la sécurisation de l'espace.

9. Schiller LOUIDOR et plusieurs de ses partisans ont investi le parquet, rendant difficiles les déplacements au sein du palais de justice de *Port-au-Prince* et créant une situation de tension au cours de laquelle, le commissaire divisionnaire a frappé au visage un (1) avocat Maître Elie Diespt AUGUSTIN ainsi que le greffier en chef du Parquet, Wilbert RHAU.

10. Les avocats-tes inscrits au barreau de *Port-au-Prince*, déjà amers vis-à-vis des agents de la PNH, en raison notamment des différents cas d'agression physique enregistrés dans la juridiction de *Port-au-Prince* au cours de l'année judiciaire 2017-2018, perpétrés par des policiers à l'encontre de confrères avocats, ont estimé qu'il s'agissait d'un cas de trop. Le 10 octobre 2018, il s'est tenue une assemblée générale extraordinaire qui a abouti à l'adoption d'une résolution selon laquelle, les avocats de ladite juridiction observeront un arrêt de travail illimité jusqu'à la révocation des policiers Wagner THOMAS, Paulo YVENEL, Jimmy MATADOR et Berson SOLJOUR. Le commissaire du gouvernement d'alors Maître Clamé Ocnam DAMEUS ayant tenté de minimiser l'incident survenu, a attiré sur sa tête la colère des avocats-tes qui ont dès lors exigé sa révocation. Cet arrêt de travail a débuté le 11 octobre 2019.

11. Durcissant leur mouvement de protestation, le 5 novembre 2018, la barrière principale du Palais de justice de *Port-au-Prince* a été enchaînée. Cependant, suite à une note publiée le 10 novembre 2018 par le *Conseil supérieur du pouvoir judiciaire* (CSPJ), condamnant la radicalité du mouvement, deux (2) jours plus tard, soit le 12 novembre 2018, les avocats-tes ont enlevé les chaînes de la barrière principale du bâtiment. Ils ont alors condamné les portes du service de plaintes, celles de la garde-à-vue et celles donnant accès aux bureaux logeant le Barreau de *Port-au-Prince*.

12. Il convient de souligner que cette situation a causé de grands préjudices aux justiciables, particulièrement les personnes en situation de rétention et de détention dans la juridiction de *Port-au-Prince*.

13. Des actions en médiation ont été amorcées. Elles n'ont pas abouti. Alors que la situation préoccupante de la juridiction de *Port-au-Prince* retenait l'attention, en raison notamment de son dénouement improbable, le 28 octobre 2018, le parquet de ce ressort a publié une note dénonçant des faussaires qui faisaient circuler sur les réseaux sociaux de fausses citations à comparaître dans le cadre du dossier PetroCaribe. Le parquet en a profité pour rappeler à l'attention de tous et de toutes que ses invitations sont généralement signifiées aux personnes concernées par acte d'huissier. Il a promis de mettre l'action publique en mouvement contre ces faussaires. A date, aucun résultat relatif à cette enquête n'est divulgué.

14. Par ailleurs, les avocats-tes sont restés sur la corde raide, n'ayant voulu négocier aucune de leurs revendications. Le 18 décembre 2018, un nouveau commissaire du gouvernement, Paul Eronce VILLARD, a été installé au parquet près le tribunal de première instance de *Port-au-Prince*. Le 19 décembre 2018, les activités judiciaires ont pu reprendre dans ladite juridiction. Ce n'est finalement que le 20 décembre 2018, les avocats-tes ont décidé de lever provisoirement la grève. Et, selon plusieurs, cet incident a jeté le froid sur la rentrée judiciaire 2018-2019.

Le 18 décembre 2018, Maître Paul Eronce VILLARD est nommé commissaire du gouvernement, ce qui met un terme à la grève des avocats-tes inscrits au Barreau de *Port-au-Prince*.

15. Toujours au cours de cette année judiciaire, la situation sécuritaire du pays était très précaire. Il ne s'est pas passé un jour sans que des cas attentatoires aux vies et aux biens des personnes vivant en Haïti

n'aient été recensés. Impersonnelle, l'insécurité a frappé indistinctement des hommes, des femmes, des adolescents, des enfants, des employés du secteur privé, des agents de la *Police Nationale d'Haïti* (PNH), des cadres de l'administration publique, des étudiants-tes, des écoliers, etc.

16. Les impacts de cette situation d'insécurité sur le fonctionnement de l'appareil judiciaire ont été énormes à *Port-au-Prince*, le palais de justice étant localisé au *Boulevard Harry Truman*, pris en sandwich entre le fief du chef de gang Anel JOSEPH et les quartiers généraux de plusieurs autres chefs de gang se partageant les huit (8) territoires de *La Saline*. Souvent, des tirs d'armes à feu automatiques ont été enregistrés, portant tous ceux et toutes celles présents sur les lieux – magistrats-tes, greffiers-ères, huissiers-ères, justiciables, avocats-tes, etc. – à s'étaler de tout leur long par terre pour éviter d'être atteints de balles perdues. De plus, ledit palais de justice a souvent été la cible des gangs armés qui, selon les informations recueillies par le RNDDH, ont exigé d'être payés par les autorités judiciaires contre l'autorisation d'y poursuivre leurs activités.

17. Dans les autres juridictions du pays, si la situation sécuritaire n'était pas aussi catastrophique, elle a été suffisamment préoccupante pour porter des avocats-tes à se révolter. Par exemple, le 18 mai 2019, à l'occasion de la célébration de la Saint-Yves, des avocats-tes inscrits au *Barreau des Gonaïves* ont marché pacifiquement dans les rues en vue d'exiger que les autorités policières et judiciaires interviennent dans l'objectif de rétablir la paix et la sécurité dans la communauté.

18. Par ailleurs, les crises sociopolitiques se sont succédé et la tension dans le pays est restée palpable, ce qui a rendu la situation générale très préoccupante, ponctuée par l'organisation de manifestations antigouvernementales exigeant le départ du président de la République Jovenel MOÏSE. Ces manifestations se sont intensifiées avec la publication, les 31 janvier et 31 mai 2019, des deux (2) rapports de la *Cour Supérieure des Comptes et du Contentieux Administratif* (CSC/CA) indiquant que les firmes du président de la République Agritrans et BETEX sont directement impliquées dans la dilapidation des fonds PetroCaribe. A *Port-au-Prince* comme dans les villes de province, les Haïtiens-nes ont pris les rues pour exiger le procès relatif à l'utilisation de ces fonds.

Les 31 janvier et 31 mai 2019, 2 rapports de la CSC/CA indiquent que les firmes du président Jovenel MOÏSE sont impliquées dans la dilapidation des fonds PetroCaribe.

19. Ainsi, pour l'année judiciaire couverte par ce rapport, au moins six (6) grandes manifestations nationales et opérations dites de verrouillage ont été enregistrées. Ces dernières se sont caractérisées par la paralysie totale des activités socioéconomiques. La dernière, encore en cours au moment de la rédaction de ce rapport, a porté les autorités étatiques à ne pas organiser de cérémonie officielle de lancement des travaux judiciaires pour l'année 2019-2020.

20. Il convient de retenir aussi que ces différents mouvements ont déjà occasionné l'assassinat de quatre-vingt-six (86) personnes dont au moins vingt-quatre (24) ont été exécutées d'une balle à la tête. Ces victimes participaient ou venaient de participer à des manifestations antigouvernementales souvent émaillées de violence, et qui se sont soldées par la destruction et/ou l'incendie partiel de bâtiments abritant des entreprises privées, des stations à essence, des supermarchés, des établissements scolaires, des maisons privées, des institutions étatiques

Les opérations de verrouillage additionnées aux mouvements de grève du personnel judiciaire et aux arrêts de travail observés par les avocats-tes de certaines juridictions, ont eu de grands impacts sur le déroulement de l'année judiciaire 2018-2019.

ainsi que des tribunaux. Par exemple, au cours de cette année judiciaire, le tribunal de paix de *Petit-Goave*, le palais de justice de *Petit-Goave* ainsi que le tribunal de paix de de *Jacmel*, ont été incendiés.

21. Les impacts sur le fonctionnement de l'appareil judiciaire haïtien, de ces opérations de verrouillage, ne sont pas négligeables. En effet, les justiciables ont dû attendre et attendent encore avant de pouvoir faire valoir leurs revendications par devant une instance de jugement, des affaires urgentes ne sont pas entendues, des instructions judiciaires pataugent, etc.

22. De plus, les nombreuses pénuries de carburant enregistrées au cours de la période couverte par ce rapport, ont forcé le personnel judiciaire ainsi que les avocats-tes à stopper leurs activités, engendrant ainsi les mêmes résultats que les opérations susmentionnées.

23. C'est donc dans ce contexte de vulnérabilité, d'incertitude, d'insécurité généralisée et de crises sociopolitiques et économiques que magistrats-tes, greffiers-ères, huissiers-ères, personnel de soutien, cadres et avocats-tes ont été appelés à travailler au cours de l'année judiciaire 2018-2019.

### III. FAITS AYANT MARQUE LA CHRONIQUE JUDICIAIRE

24. Au cours de la période couverte par ce rapport, de nombreux faits ont marqué l'actualité judiciaire. En voici quelques-uns qui ont retenu l'attention du RNDDH et de ses structures régionales :

#### 1. **Affaire Nice SIMON / Yves LEONARD**

25. Le 2 octobre 2018, la mairesse de Tabarre Nice SIMON a été sévèrement battue par son conjoint Yves LEONARD. Au lendemain des faits, la victime a dénoncé publiquement son agresseur et a saisi l'appareil judiciaire haïtien pour séquestration et tentative d'assassinat. Les 3 octobre et 25 octobre 2018, deux (2) mandats ont été émis à l'encontre de Yves LEONARD. Il n'a jamais été arrêté. Le 28 décembre 2018, le juge d'instruction Wando SAINT VILLIER a rendu une ordonnance renvoyant l'inculpé par devant le tribunal correctionnel pour voies de faits suivies de coups et blessures au préjudice de Nice SIMON. La victime, estimant que les faits ont été minimisés par cette ordonnance, a interjeté appel. Le 31 juillet 2019 la Cour d'appel de *Port-au-Prince* a rendu un arrêt confirmant l'ordonnance émise par le juge instructeur susmentionné. Cependant, à date, aucune suite n'est donnée à l'affaire et Yves LEONARD n'est toujours pas arrêté.

26. Pour sa part, le commissaire du gouvernement près le tribunal de première instance de la *Croix-des-Bouquets* Yvon JEAN-NOËL a été mis en disponibilité le 3 octobre 2018 dans le cadre de ce dossier.

#### 2. **Affaire relative à la saisie d'une cargaison d'armes à feu**

27. Le 26 octobre 2018, après son audition à titre de témoin dans le cadre de l'affaire relative à la saisie d'une cargaison d'armes à feu au *Port de Saint-Marc*, l'ancien directeur général de la *Police nationale d'Haïti* (PNH), Godson ORELUS a été arrêté, sous les chefs d'accusation de complicité de crime transnational, de trafic illicite d'armes à feu et de munitions ainsi que d'association de malfaiteurs.

28. En effet, le 8 septembre 2016, une importante cargaison d'armes à feu automatiques a été saisie au *Port de Saint-Marc*. Rapidement, le dossier a été transféré au cabinet d'instruction du magistrat Dieunel





ETIENNE. Le 10 avril 2019, le magistrat instructeur a acheminé le dossier au parquet de ce ressort, pour réquisitoire d'informer.

137. Le réquisitoire d'informer a été acheminé au magistrat instructeur en juillet 2019. Cependant, il attend encore le rapport de la police judiciaire.

#### *12. Affaire Jean Claude DUVALIER et Consorts*<sup>10</sup>

138. Le 20 février 2014, la cour d'appel de *Port-au-Prince*, a émis un arrêt-ordonnance dans lequel elle a cassé l'ordonnance rendue en date du 27 janvier 2012 par le juge Carvès JEAN, reconnu le caractère imprescriptible des crimes contre l'humanité, ordonné un complément d'instruction et indiqué que l'ensemble de plaignants-tes, consorts et témoins soient entendus et a confié cette nouvelle instruction au juge de la cour d'appel, Durin DURET Jr.

139. Le 4 octobre 2014, le dictateur Jean Claude DUVALIER est décédé. Et, alors que la justice reste passive dans le cadre de ce dossier, certains plaignants-es et Consorts sont aussi décédés.

140. Les résultats de l'instruction du magistrat Durin DURET Jr. sont encore attendus.

#### XIV. COMMENTAIRES ET RECOMMANDATIONS

141. L'année judiciaire 2018-2019 s'est déroulée dans un contexte particulier, caractérisé par la dégradation de la sécurité générale et de la situation sociopolitique et économique du pays. De plus, les différents mouvements de protestation qui ont été réalisés par le personnel judiciaire pour exiger notamment de meilleures conditions de travail, additionnés aux arrêts de travail observés par les avocats-tes de certaines juridictions du pays, ont grandement impacté le déroulement de cette année judiciaire. Par conséquent, un grand ralentissement des activités a été observé.

142. La chronique judiciaire a cependant été riche en événements qui ont retenu l'attention de la population. En effet, c'est au cours de l'année judiciaire 2018-2019 que le dossier relatif au massacre de La Saline a été introduit auprès des autorités judiciaires et qu'une ordonnance de non-lieu a été émise par le magistrat Brédy FABIEN en faveur du président de la République dans le cadre du dossier de blanchiment des avoirs. C'est encore cette année que le ministre de la justice et de la sécurité publique Jean Roody ALY a procédé à la libération de sept (7) étrangers arrêtés sur le sol haïtien avec en leur possession des armes de guerre, que le pasteur Onold PETIT jugé pour viols répétés sur une mineure qui est tombée enceinte, a été acquitté par le tribunal criminel de Jérémie siégeant sans assistance de jury, que l'ex-député Jean Fenel THANIS a été condamné au correctionnel pour avoir eu en sa possession 491.5 kilogrammes de marijuana et que le substitut commissaire du gouvernement près le tribunal de première instance de *Port-au-Prince*, Jeanty SOUVENIR a ordonné la libération de deux (2) individus impliqués dans des actes de banditisme puis les a arrêtés de nouveau sur ordre de ses supérieurs hiérarchiques.

143. Le RNDDH et ses structures régionales sont plus que jamais alarmés par le dysfonctionnement chronique des tribunaux de paix du pays. Bâtiments délabrés, toitures trouées, murs lézardés, maisonnettes exigües, absence de blocs hygiéniques, absence de matériels de déplacement et de fonctionnement : Les

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<sup>10</sup> Pour plus de détails voir : *Affaire Jean-Claude DUVALIER et consorts* : « En Haïti, on poursuit l'enquête, pas les criminels » mars 2018, 65 pages

tribunaux de paix ne peuvent accomplir la mission qui leur est dévolue. De même, les différentes plaintes des membres de la population à l'encontre de nombreux juges de paix, affectés pour la plupart dans des zones reculées, préoccupent le RNDDH et ses structures régionales.

144. Par ailleurs, il est déplorable que plusieurs dossiers qui avaient, au cours des années antérieures, occupé l'actualité judiciaire, n'aient pas connu d'avancée notable. Parmi eux se retrouvent l'affaire de Sherlson SANON, la disparition du journaliste Vladimir LEGAGNEUR, l'assassinat des trois (3) jeunes femmes sourdes-muettes, l'expédition punitive à *Lilavois*, l'intervention de la police à *Grand-Ravine*, l'assassinat de l'agent de sécurité de *Caribe Convention Center* par un agent de la PNH en détachement avec Michel Joseph MARTELLY, l'affaire PetroCaribe, etc.

145. Pour sa part, la juridiction de première instance de *Port-au-Prince* a été particulièrement inerte au cours de cette année judiciaire. En effet, les cabinets d'instruction ont très peu travaillé et, contrairement aux recommandations des organisations de droits humains, ils ne sont pas arrivés à appliquer une méthodologie favorisant le traitement des dossiers par ordre d'arrivée. Ainsi, des milliers de personnes en conflit avec la Loi sont en prison depuis plusieurs années alors que les dossiers d'autres personnes à peine emprisonnées, sont traités avec le bénéfice de l'urgence.

146. En outre, il est inadmissible que les affaires soient distribuées aux cabinets d'instruction sans tenir compte du nombre de dossiers en cours de traitement car si certains cabinets croulent sous les instructions, d'autres sont presque vides. De même, il est déplorable que plusieurs décanats distribuent les dossiers aux magistrats instructeurs sur la base de l'influence politique.

147. Si au cours de cette année judiciaire, de nombreuses nominations ont été faites, il convient de souligner que le RNDDH et ses structures régionales restent convaincus que le renouvellement des mandats des magistrats ne peut être laissé au caprice des autorités de l'Exécutif. En effet, les mandats des magistrats qui font généralement montre de professionnalisme et d'indépendance dans le cadre de leur travail ne sont pas renouvelés.

148. De nombreux engagements avaient été pris par les autorités étatiques vis-à-vis des greffiers-ères, huissiers-ères et magistrats-tes en vue de satisfaire leurs nombreuses revendications de formation et d'amélioration de leurs conditions générales de travail. Il est regrettable que ces engagements n'aient pas été respectés car ceci a été la cause de plusieurs arrêts de travail observés au cours de l'année judiciaire analysée par ce rapport.

149. Les assises criminelles avec et sans assistance de jury ont été réalisées dans *seize* (16) des *dix-huit* (18) juridictions de première instance du pays, dans les mêmes conditions qu'au cours des années antérieures c'est-à-dire, avec très peu de moyens, des instructions judiciaires bâclées, une mauvaise coordination de la chaîne pénale, le non-respect des droits aux garanties judiciaires des personnes en attente de jugement, l'absence des représentants du ministère public, des témoins et des parties civiles.

150. Toutefois, le RNDDH et ses structures régionales ont retenu qu'au cours de ces audiences criminelles, *six cent quatre-vingt-treize* (693) cas ont été entendus pour lesquels *six cent seize* (616) verdicts ont été rendus. *Sept cent vingt* (720) personnes ont été jugées. Parmi elles, *quatre cent-douze* (412) ont été condamnées et *deux cent-trente-et-une* (231) libérées. *Soixante-dix-sept* (77) attendent leur verdict, les doyens des

tribunaux criminels ayant ordonné le dépôt des pièces. *Cent-vingt-deux* (122) personnes sont retournées en prison sans avoir été jugées.

151. De plus, parmi les personnes jugées, seules *vingt-neuf* (29), soit 4.51 %, sont des femmes.

152. *Soixante-dix-huit* (78) individus ont été condamnés pour crimes sexuels dont *quatorze* (14) ont été perpétrés sur mineures.

153. Tenant compte des conditions difficiles du déroulement de l'année judiciaire 2018-2019, le RNDDH et ses structures régionales estiment que l'appareil judiciaire haïtien a quand même gagné le pari d'organiser les audiences criminelles dans au moins *seize* (16) des *dix-huit* (18) juridictions de première instance du pays.

154. Cependant, les efforts pour combattre l'impunité et la détention préventive illégale et arbitraire n'ont pas été suffisants pour impacter significativement la justice en Haïti. En effet, le fonctionnement de l'appareil judiciaire a fait diminuer le taux de détention préventive de *seulement* 2.19 %. Il est passé de 74.57 % au 14 septembre 2018 à 72.37 %, au 12 septembre 2019.

155. Ainsi, l'année judiciaire 2018-2019 aura été somme toute, une année ordinaire. Elle n'aura apporté aucun changement majeur dans la routine judiciaire du pays.

156. Sur la base de toutes ces considérations, le RNDDH et ses structures régionales recommandent aux autorités concernées de :

- Porter les magistrats instructeurs à travailler selon l'ordre d'arrivée des dossiers ;
- Porter les doyens des tribunaux de première instance à distribuer les cas en tenant compte du nombre de dossiers en cours d'instruction dans les cabinets ;
- Intensifier les audiences correctionnelles et criminelles ;
- Rendre fonctionnels tous les tribunaux de paix ;
- Rendre fonctionnelle l'inspection judiciaire du CSPJ ;
- Donner suite aux recommandations du CSPJ de renouveler les mandats des magistrats ;
- Donner suite aux revendications des magistrats-tes, des greffiers-ères et des huissiers.

Statement from Maurissaint Jean Irvelt Chéry, Exec. Sec'y, Org. du Peuple en  
Lutte (Feb. 6, 2012) [Plaintiffs\_0000519-20]



## *Organisation du Peuple en Lutte*

*27 bis, Rue Louverture, Delmas 33, Haïti, Tel : 3331-3095, 3331-3096*

### **À TOUX CEUX QUE LA PRÉSENTE CONCERNE**

Le Comité exécutif de l'Organisation du Peuple en Lutte (OPL) se fait le devoir d'alerter les instances de justice nationales et internationales, les organisations locales et étrangères de défense des droits de l'homme, la presse locale et étrangère, l'opinion publique nationale et internationale sur la recrudescence et l'escalade des actes de violation des droits de la personne humaine perpétrés contre la population de la commune des Irois par les individus placés pour les protéger et les guider parce ce que détenant le pouvoir d'État. Il est à souligner que de tels actes se sont reproduits après un temps d'accalmie suivant les violences de la période électorale, temps d'accalmie dû à l'incertitude de qui détient réellement le pouvoir après la débâcle du camp de l'Unité au cours de l'élection présidentielle. Mais après l'accord conclu entre le Groupe de Parlementaires du Renouveau (GPR) issu de l'Unité, des éléments de Lavalas, des anciens duvaliéristes et le clan Martelly, la recette était prête pour tous les dégâts, toutes les violations, tous les crimes les plus rébarbatifs.

La même horde qui a orchestré l'assassinat d'Ecclésiaste Boniface le 27 juillet 2007, détruit la station de radio dénommée Radio Vison Nouvelle, blessé un certain nombre de citoyens dont Juders Isemé qui perdit un œil et Nissage Martyr qui a dû être amputé de la jambe droite, le 8 avril 2008, brûlé 36 maisons le 29 octobre 2009 rendant encore plus vulnérables 42 familles villageoises déjà en fuite pour protéger leurs vies, cette même horde, disons-nous, revigorée par l'alliance nouvelle a encore frappé. En représailles à une plainte déposée contre le prévenu Vilème Duclona, cousin du fameux Amaral Duclona et du même acabit, arrêté fortuitement pour des voies de fait perpétrées à Croix-des-Bouquets, la plainte liait le prévenu aux événements des Irois, les troupes du maire ont décidé de frapper une nouvelle fois. Elles se sont donc portées le 22 novembre 2011 au boulevard Pont Piguy à l'entrée nord de la ville des Irois devant la dernière maison encore debout appartenant aux familles persécutées. Ils y ont mis le feu, détruisant tout et brûlant vive en même tant la dame Nèrelie Bell, une vénérable vieille de 105 ans, grand-mère des Ismé. Au surplus les gens déplacés en divers points de la République ne cessent de recevoir des menaces, au point que leur parenté refuse de les accueillir pour ne pas s'attirer la fureur des gens du maire, de leur regroupement politique, l'Eskanp/KOREGA et de leurs alliés politiques sur tout le territoire de la République. Les personnes déplacées courent partout en Haïti un grand danger dans ce contexte permanent de déni de justice et d'impunité dévolue à tous les criminels, grands et petits dès qu'ils sont liés à un centre du pouvoir. En particulier, les dénommés David Boniface, Juders Isemé, Franckel Ismé et Nissage Martyr sont menacés dans leur vie et surtout incapables de vaquer à leurs occupations et de pourvoir aux besoins de leurs familles respectives. Le fait le plus marquant de cette situation est manifeste dans le document en date du 5 décembre

2011 signé du juge de paix Me Agnel ROMEUS déclarant son impuissance pour protéger la vie de la population traumatisée contre les troupes armées du maire Jean Morose Viliena et s'en remet aux organismes de défense des citoyens pour leur venir en aide. Le Comité exécutif national de l'Organisation du Peuple en Lutte confirme que ces violences sont politiquement ne cesse de s'opposer.

La présente constitue le témoignage de la direction du Parti qui n'a cessé de subir toutes sortes d'attaques contre la vie et les biens de ses membres sur tout le territoire de la République.

Fait à Port-au-Prince, le 6 février 2012

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Maurissaint Jean Irvelt Chéry  
Secrétaire exécutif

Urgent Action, Amnesty Int'l, David Boniface (m), Aged 27; His Family (Oct. 27, 2008), <https://www.amnesty.org/en/wp-content/uploads/2021/06/amr360052008en.pdf> [Plaintiffs\_0000038-39]



**PUBLIC**

**AI Index: AMR 36/005/2008**

**27 October 2008**

**UA 300/08**      **Fear for safety/ death threats**

**HAITI**            **David Boniface (m), aged 27**  
**His family**

David Boniface, a school teacher and human rights activist in the community of Les Irois, Grande Anse department, has received death threats. Amnesty International is concerned for his safety and that of his family.

David Boniface was threatened when he returned to Les Irois on 13 October in order to visit his parents. He had been in hiding for the previous 15 months after his brother was killed by armed men allegedly associated to the community's mayor. On 14 October, David Boniface fled the community when he received reports from neighbours that armed men, including the alleged killer of his brother, went to his home looking for him.

Around 8pm on 27 July 2007, the Mayor of Les Irois and several armed men broke into the Boniface family home. They were looking for David who was not there at the time. However, they found his 23-year-old brother, Ecclésiaste Boniface who was attacked with several machete blows before being shot dead by one of the Mayor's assistants. The man who pulled the trigger has been identified by at least two eye-witnesses, but has yet to be arrested. On 28 July 2007 after burying his brother, David Boniface left Les Irois community fearing for his life.

David Boniface believes that he and not his brother would have been killed because of his work as a human rights activist in Les Irois. Earlier on 27 July, he had helped a woman lodge a complaint after she was allegedly smacked by the Mayor because she threw some garbage on the side of the road. David Boniface accompanied the woman to the office of the Justice of the Peace [*juges de paix*] to lodge a complaint. Under pressure from the Mayor, the Justice of the Peace sent the woman into detention [*garde à vue*] at the nearest police station in Anse d'Hainault, a community located at a 15-minute drive from Les Irois. The woman was released without charge three days later.

Earlier in the year, the Mayor of Les Irois was allegedly implicated in another case of violence in the community, when on 8 April 2008 he broke into the local community radio and cybercafé accompanied by a large number of his supporters. Nissage Marthyr, the owner of the premises and radio staff member Jildens Ismé, received gun shots and as a result of which, they respectively had a foot amputated and lost one eye. On 29 September 2008, the Mayor was arrested and is currently held in pre-trial detention in the town of Jérémie where he faces charges of murder for the death of Ecclésiaste Boniface and the attempted murder of Nissage Marthyr, and Jildens Ismé.

**RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in French or your own language:**

- expressing concern for the safety of David Boniface and his family;
- urging the authorities to provide them with adequate protection and to guarantee their safety according to their wishes;
- calling for a full, prompt and impartial investigation into the death of Ecclésiaste Boniface and the threats received by David Boniface, for the results to be published and those responsible to be brought to justice;

Plaintiffs\_0000038

- reminding the authorities that the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms recognizes the legitimacy of the activities of human rights defenders and their right to carry out their activities without any restrictions or fear of reprisals.

**APPEALS TO: (It may be difficult to send faxes to Haiti, but please keep trying)**

Prime minister and minister of Justice and Public Security

Madame Michèle D. Pierre-Louis

La Primature, Route de Bourdon, Imp. Prosper, n.1,(Villa d'Accueil),Port-au-Prince, HAITI

**Fax: +509 3228 2772**

**+509 3245 0474 (please keep trying and ask for the fax line "la ligne de fax s'il-vous-plaît")**

**Salutation: Madame la première ministre et ministre de la Justice/ Dear Prime minister**

General Director of the Haiti National Police

Mario Andrésol

Directeur Général de la Police Nationale d'Haïti

Grand Quartier Général de la Police, 12 rue Oscar Pacot, Port-au-Prince, Haiti (W.I.)

**Fax: +509 3245 7374**

**Salutation: Monsieur le Directeur Général/Dear Mr Andresol**

Head of Human Rights Section- MINUSTAH & Representative of the High Commissioner for Human Rights

Lizbeth Cullity

Human Rights Section, MINUSTAH, 385, Ave. John Brown, Bourdon, B.P. 557, Port-au-Prince, Haiti (W.I.)

**Fax: +509 244 9366/ 9367**

**COPIES TO:**

Human rights organization

Justice et Paix

Foyer Culturel Jérémie

Rue Abbé Huet

Jérémie, Haiti HT 7110

and to diplomatic representatives of Haiti accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY.** Check with the International Secretariat, or your section office, if sending appeals after 8 December 2008.

Urgent Action, Amnesty Int'l, Human Rights Defenders' Lives in Danger (Apr. 12, 2017) (Exhibit A to Declaration of Juders Ysemé, *Boniface v. Viliena*, No. 17-cv-10477-ADB (D. Mass. Aug. 8, 2019), Dkt. 78-1)

# URGENT ACTION

## HUMAN RIGHTS DEFENDERS' LIVES IN DANGER

**Human rights defenders David Boniface and Juders Ysemé fear for their lives following the sudden death of their colleague, Nissage Martyr, one day after service of a lawsuit filed by the three men in the US for grave human rights violations against Jean Morose Viliena, the former mayor of their hometown in Haiti. The men have reported repeated death threats and attacks from the former mayor since 2007, and must be provided adequate protection.**

On 22 March, **David Boniface, Juders Ysemé** and **Nissage Martyr** filed a lawsuit in a federal court in Boston, northeast US, against Jean Morose Viliena, the former mayor of their hometown of Les Irois, southwestern Haiti. The lawsuit was filed in the US because Jean Morose Viliena fled to the US in early 2009 after Haitian authorities opened a criminal investigation against him for the 2007 murder of David Boniface's brother, and a 2008 attack on a community radio station wherein Nissage Martyr lost a leg and Juders Ysemé lost his eye from bullet wounds. The three men claim that Jean Morose Viliena is responsible for a series of attacks against his critics between 2007 and 2009, including "arson", "extrajudicial killing", "attempted extrajudicial killing", "torture", and "crimes against humanity", which were carried out under his lead by an armed group aligned with his political party. The day after Jean Morose Viliena was served with the lawsuit, 24 March, Nissage Martyr suddenly became violently ill and died on the way to the hospital in Les Irois. His family claims he had been in good health and, with the help of their lawyers, has demanded an immediate independent autopsy and a full investigation into his death. The local prosecutor has authorized the autopsy, but to date, no investigation has been initiated.

David Boniface and Juders Ysemé are human rights defenders and perceived supporters of the Struggling People's Party (Organisation du Peuple en Lutte), an opposition party in Haiti. Since 2007, the two men and Nissage Martyr have reported that Jean Morose Viliena and his associates have sent them death threats, violently attacked and attempted to kill them for carrying out their legitimate work defending human rights, starting the community's first radio station, and pursuing justice against Jean Morose Viliena and his associates to stop violence in the community. In 2015, the Inter-American Commission on Human Rights granted the three men and their families precautionary measures to ensure their safety. David Boniface and Juders Ysemé told Amnesty International that the Haitian authorities have done nothing to comply with these measures due to rampant impunity in the country. The two men and their families fled Les Irois following Nissage Martyr's death for fear for their safety. They stated that the only way justice will be served is if they are able to testify against Jean Morose Viliena, but that without adequate protection, they fear they will be killed before they are able to do so.

### Please write immediately in French or your own language:

- Calling on the authorities to initiate an immediate, prompt and impartial investigation into the death of Nissage Martyr, to make the results public and bring those responsible to justice;
- Urging them to comply with the precautionary measures ordered by the Inter-American Commission on Human Rights in 2015, and immediately provide effective protection to David Boniface, Juders Ysemé and their families, in accordance with their wishes.

### PLEASE SEND APPEALS BEFORE 24 MAY 2017 TO:

#### Minister of Justice and Public Security

Heidi Fortuné  
Ministre de la Justice et de la Sécurité  
Publique  
Primature d'Haïti  
33, Boulevard Harry Truman  
Port-au-Prince, Haïti, HT - 6110  
Email: via web:  
[http://primature.gouv.ht/?page\\_id=9](http://primature.gouv.ht/?page_id=9)

**Salutation: Dear Minsiter/ Cher Ministre**

#### Prime Minister

Dr. Jack Guy Lafontant  
Premier Ministre  
Primature d'Haïti  
33, Boulevard Harry Truman  
Port-au-Prince, Haïti, HT - 6110  
Email: via web:  
[http://primature.gouv.ht/?page\\_id=22](http://primature.gouv.ht/?page_id=22)  
**Salutation: Dear Prime Minister/ Cher  
Premier Ministre**

#### Minister of Foreign Affairs

Antonio Rodrigue  
Ministre des Affaires Etrangères  
Primature d'Haïti  
33, Boulevard Harry Truman  
Port-au-Prince, Haïti, HT - 6110  
Email: via web:  
[http://primature.gouv.ht/?page\\_id=9](http://primature.gouv.ht/?page_id=9)  
**Salutation: Dear Minister/ Cher  
Ministre**

**Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:**

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation  
Please check with your section office if sending appeals after the above date.

**AMNESTY  
INTERNATIONAL**



# URGENT ACTION

## HUMAN RIGHTS DEFENDERS' LIVES IN DANGER

### ADDITIONAL INFORMATION

In December 2006, Jean Morose Viliena was elected Mayor of Les Irois as a representative of the Haitian Democratic and Reform Movement (Mouvement démocratique et rénovateur d'Haïti, MODEREH). Amnesty International issued an Urgent Action in 2008 calling for protection for David Boniface, Juders Ysemé and Nissage Martyr, following incidents spearheaded by Jean Morose Viliena that began in 2007 (see: <https://www.amnesty.org/en/documents/amr36/005/2008/en/>).

Around 8pm on 27 July 2007, Jean Morose Viliena, then Mayor of Les Irois, and several armed men went to David Boniface's family home. They were reportedly looking for David Boniface who was not there at the time. They found his brother, Ecclesiaste Boniface, who they dragged into the street and attacked with several machete blows and then shot dead. Earlier that same day, David Boniface had accompanied the woman to the office of the Justice of the Peace (*juge de paix*) to defend a complaint filed against her by the mayor, after the mayor allegedly smacked her for throwing some garbage on the side of the road. Since the murder of his brother, David Boniface has continued to seek justice and has subsequently received additional death threats.

On 8 April 2008, Jean Morose Viliena broke into the Radio Nouvelle Vision community radio station, accompanied by a large number of his supporters. The men beat Nissage Martyr, the owner of the premises, and radio supporter Juders Ysemé, and when they attempted to run away from the building, Nissage Martyr stated that Jean Morose Viliena ordered his security guard to shoot and kill them. Although the two men survived the gunshots, Juders Ysemé lost an eye and Nissage Martyr's leg was amputated as a result of the bullet wounds.

Jean Morose Viliena fled to the Boston, Massachusetts area in early 2009, where media reports state he began working as a bus driver and later an Uber driver. David Boniface, Juders Ysemé and Nissage Martyr claim that Jean Morose Viliena continued to travel to Les Irois and exercise control over an armed group aligned with the political KOREGA militia while based in the US, in order to continue intimidating and repressing his perceived political opponents in Les Irois. Nissage Martyr reported that on 29 October 2009, he watched as Jean Morose Viliena's associates set fire to 36 homes belonging to perceived supporters of the opposition Struggling People's Party in Les Irois, including their own homes.

Haiti has faced great political instability since the 2004 coup, after which the UN established its Stabilization Mission in Haiti (MINUSTAH), whose mandate continues to this day. The devastating earthquake on 12 January 2010 added to this instability, which left more than two million people homeless and created a crisis of internally displaced people. Cholera broke out in Haiti in October 2010, which has taken more than 9,000 lives and sickened 800,000. UN negligence in maintaining its sanitation facilities and waste disposal have been shown to have majorly contributed to the outbreak (see: <https://www.amnesty.org/en/latest/news/2015/10/un-failing-cholera-victims-in-haiti-five-years-after-outbreak/>). On 5 February 2016 a national agreement establishing a transitional government was reached to find a solution to the political crisis. Following this, Jovenel Moïse was elected President and took office on 7 February 2017.

Between 2012 and 2014, Amnesty International recorded numerous instances of attacks, threats and harassment against human rights defenders in Haiti, including lawyers, which often seemed to be related to their human rights work. In most cases, the authorities have failed to carry out prompt and thorough investigations. Moreover, the authorities have not put in place effective protection measures to enable the defenders to carry out their work without fear of reprisals, in violation of multiple orders from the Inter-American Commission on Human Rights.

Name: David Boniface, Juders Ysemé and Nissage Martyr

Gender m/f: m

UA: 87/17 Index: AMR 36/6045/2017 Issue Date: 12 April 2017

## EXHIBIT D

### Relevant Haitian Law Provisions

#### Code d'Instruction Criminelle [Code of Criminal Procedure]

##### Article 1

Art. 1er.- L'action pour l'application des peines n'appartient qu'aux fonctionnaires auxquels elle est confiée par la loi.

L'action en réparation du dommage causé par un crime, par un délit ou par une contravention, peut être exercée par tous ceux qui ont souffert de ce dommage.

##### Article 3

Art. 3.- L'action civile peut être poursuivie en même temps et devant les mêmes juges que l'action publique.

Elle peut aussi l'être séparément : dans ce cas, l'exercice en est suspendu tant qu'il n'a pas été prononcé définitivement sur l'action publique intentée avant ou pendant la poursuite de l'action civile.

Le présent article ne déroge point aux dispositions consacrées par le code de commerce, relativement à l'administration des biens des faillis.

##### Article 294

*C.h. 285* Art. 294.- Lorsque l'accusé aura été déclaré coupable, le **commissaire du gouvernement** fera sa réquisition au tribunal pour l'application de la loi.- Inst. crim. 144, 295 et suiv., 307 et suiv.

La partie civile posera ses conclusions à fin de restitution et de dommages-intérêts.- C. civ. 929, 1168.- Inst. crim. 53, 291.

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When the accused has been declared guilty, **the commissaire du gouvernement** [government prosecutor] will make his formal request to the court for the application of the law.

The civil party will present its conclusions for the purpose of restitution and damages.

##### Article 371

Hors ce cas, il sera procédé de suite à la lecture de l'ordonnance de renvoi au tribunal criminel, de l'acte de notification de l'ordonnance ayant pour objet la représentation du contumax, et des procès-verbaux dressés pour constater la publication et l'affiche.- Inst. crim. 177, 366.

PRIVILEGED & CONFIDENTIAL  
DRAFT CONCANNON EXPERT REPORT (January 27, 2022)

Après cette lecture, le tribunal sur les conclusions du **Ministère public**, prononcera sur la contumace.- Inst. crim. 372.

Si l'instruction n'est pas conforme à la loi, le tribunal la déclarera nulle, et ordonnera qu'elle sera recommencée, à partir du plus ancien acte illégal.- Inst. crim. 375.

Si l'instruction est régulière, le tribunal prononcera sur l'accusation, et statuera sur les intérêts civils, le tout sans assistance ou intervention de jurés

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Apart from this case [of an excused absence], the proceedings will continue onto the reading of the *ordonnance de renvoi* [charging document] referring the case to the criminal court, the act of notification of the charging document requesting the representation of the *in absentia* defendant, and the minutes prepared to document the publication and posting.

After this reading, the court on the conclusions of the **Public Prosecutor**, will rule on the *in absentia* charges.

If the pre-trial proceedings are not in accordance with the law, the court will declare them void, and will order that they be restarted, starting from the oldest illegal action.

If the pre-trial proceedings are in accordance with the law, the court will pronounce on the accusation, and will rule on the civil interests, all without the assistance or intervention of jurors.

**Code Pénal [Penal Code]**

Article 356, para. 1

Art.356.- Quiconque aura volontairement mis le feu à des édifices, navires, bateaux, magasins, chantiers, lorsqu'ils sont habités ou servent à l'habitation et généralement aux lieux habités ou servant à l'habitation, qu'ils appartiennent ou n'appartiennent pas à l'auteur du crime sera puni de travaux forcés à perpétuité. (Ainsi modifié par le décret du 4 Juillet 1988).

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Anyone who willfully sets fire to buildings, ships, boats, stores, construction sites, when they are inhabited or used for habitation and generally to places inhabited or used for habitation, whether or not they belong to the author of the crime, will be punished with forced labor for life.