

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JANE W., in her individual capacity,	:	CIVIL ACTION
and in her capacity as the personal	:	
representative of the estates of her	:	
relatives, James W., Julie W., and Jen	:	
W., et al.,	:	No.: 18-cv-569
Plaintiffs,	:	
	:	
v.	:	
	:	
MOSES W. THOMAS,	:	
Defendant.	:	

ORDER

AND NOW, this 16TH day of August, 2022, upon consideration of Plaintiffs' Memorandum of Law in Support of Compensatory and Punitive Damages (ECF No. 83),¹ and no response thereto, it is hereby **ORDERED** that Defendant pay \$6,000,000 in compensatory damages and \$15,000,000 in punitive damages to each Plaintiff.²

¹ By Memorandum and Order dated September 15, 2021, the Honorable Petrese B. Tucker granted Plaintiffs' Motion for Summary Judgment. (Memo., ECF No. 70; Order, ECF No. 71). Pursuant to 28 U.S.C. Section 636, Judge Tucker also directed me to determine the damages due Plaintiffs. (Order, ECF No. 71). On July 25, 2022, the underlying matter was reassigned from Judge Tucker to the Honorable Karen S. Marston. (Order, ECF No. 85).

² The facts of this matter were set forth at length in Judge Tucker's Memorandum granting summary judgment in favor of Plaintiffs and against Defendant on their claims under the Alien Tort Statute (ATS), 28 U.S.C. Section 1350, and Torture Victim Protection Act (TVPA), 28 U.S.C. Section 1350 note. (Memo., ECF No. 70, at 4-14). "Surveying the cases calculating compensatory and punitive damages under the ATS and/or TVPA, one district court found six factors that weighed heavily in decisions across the circuits[.]" *Yousof v. Samantar*, No. 1:04cv1360, 2012 WL 3730617, at *14 (E.D. Va. Aug. 28, 2012) (citing *Doe v. Saravia*, 348 F. Supp. 2d 1158-59 (E.D. Cal. 2004)). These factors include:

- i. Brutality of the act;
- ii. Egregiousness of defendant's conduct;
- iii. Unavailability of criminal remedy;
- iv. International condemnation of act;
- v. Deterrence of others from committing similar acts;
- vi. Provision of redress to plaintiff, country and world.

Saravia, 348 F. Supp. 2d at 1159 (citing *In re Estate of Ferdinand E. Marcos Human Rights Litig.*, 978 F.2d 493 (9th Cir. 1992); *Cabello v. Fernandez-Larios*, No. 99-0528 (S.D. Fla. Oct. 31, 2003); *Tachiona v. Mugabe*, 234 F. Supp. 2d 401, 419 (S.D.N.Y. 2002); *Mushikiwabo v. Barayagwiza*, No. 94 Civ. 3627, 1996 WL 164496, at *3 (S.D.N.Y. Apr. 9, 1996); *Xuncax v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995) *Filartiga v. Pena-Irala*, 577 F. Supp. 860 (E.D.N.Y. 1984)).

Considering the first two factors together, it is difficult to fathom more brutal or egregious acts. Despite having received training on the laws of armed conflict, including regarding the protection of children during war, the requirements of the Geneva Conventions, the prohibition against attacking houses of worship or facilities bearing the Red Cross's emblem, and the importance of distinguishing between military targets and civilian locations generally, as well as a copy of the United States Uniform Code of Military Justice (also adopted by Liberia) setting forth soldiers' ethical duties and consequences for violations thereof, Defendant, as a senior officer, led an elite special forces unit in a massacre of approximately 600 unarmed civilians – primarily from two persecuted ethnic groups and including women and children – who had taken refuge in a church with Red Cross and United Nations symbols in an attempt to escape the violence of the First Liberian Civil War. (Stmt. of Stip. Facts, ECF No. 60-4, at ¶ 3; William X Decl., ECF No. 61-6, at ¶ 4; William Z Decl., ECF No. 61-7, at ¶¶ 19, 21, 30; Jett Supp. Exp. Rpt., ECF No. 61-9, at 29, 37; Mark Huband Decl., ECF No. 60-10, at ¶ 15). Defendant only called off the hour-long attack on the church – “All soldiers out” – because he believed “everyone [i.e., all the civilians] [was] dead.” (John Z Decl., ECF No. 60-8, at ¶ 19). Plaintiffs survived this atrocity only by hiding among dead bodies or in the church's pulpit. (Jane W Decl., ECF No. 60-5, at ¶ 20; John X Decl., ECF No. 60-6, at ¶¶ 26, 28; John Y Decl., ECF No. 60-7, at ¶¶ 20, 22; John Z Decl., ECF No. 60-8, at ¶ 15). The murdered victims included John Y's aunt and her unborn baby, John X's wife, daughter and brothers, and Jane W's husband and daughters. (Jane W, ECF No. 60-5, at ¶¶ 19, 26; John X, ECF No. 60-6, at ¶¶ 26, 29, 31; John Y, ECF No. 60-7, at ¶ 35). John Y was haunted for years by visions of the victims, including his dead relatives. John Z remains emotionally traumatized and Jane W has trouble sleeping. (Jane W Decl., ECF No. 60-5, at ¶ 32). John X was forced to curtail his education to care for his extended family. (John X Decl., ECF No. 60-6, at ¶ 46). John Y and John Z continue to suffer physical injuries from, respectively, being shot in the leg and having his head stepped on by a soldier. (John Y Decl., ECF No. 60-7, at ¶ 36; John Z Decl., ECF No. 60-8, at ¶ 32).

The Court next considers the unavailability of a criminal remedy and whether the acts were condemned internationally. The United States State Department cited the massacre as one of the “worst single episodes” of the Liberian Civil Wars. (Jett Supp. Exp. Rpt., ECF No. 61-9, at 39-40). Human Rights Watch agreed, calling it “[a]mong the most egregious abuses committed . . .” (*Id.*). Nonetheless, Defendant faced no punishment for leading the atrocity, which was blamed on a rebel group; on the contrary, he was promoted to head of the Defense Intelligence Service. (William Z Decl., ECF No. 61-7, at ¶¶ 31, 38). As Judge Tucker observed in her summary judgment opinion, “[e]ach avenue of potential accountability for the Massacre, from the military to civilian justice systems and a Truth and Reconciliation Commission, failed to punish the perpetrators[,]” including Defendant. (Memo., ECF No. 70, at 13). In 2000, he emigrated to the United States and lived in Sharon Hill, Pennsylvania, despite an outstanding

removal order, until he returned to Liberia in 2019. (Answer, ECF No. 28, at ¶ 8; Stmt. of Stip. Facts, ECF No. 60-4, at ¶¶ 14, 16).

Lastly, although no amount of damages will provide adequate redress for what they have suffered, a substantial award could have some deterrent effect on future would-be human rights abusers. If nothing else, such an award may further the TVPA's purpose of "making sure that torturers and death squads will no longer have a safe haven in the United States." S. Rep. No. 84-2, at 3 (1991). Indeed, the Court notes that although Defendant had lived in the United States for approximately 19 years, he fled to Liberia less than two years after this action was instituted. (Answer, ECF No. 28, at ¶ 8; Stmt. of Stip. Facts, ECF No. 60-4, at ¶¶ 14, 16).

In view of these considerations, there is no doubt that both substantial compensatory and punitive damages are due to each Plaintiff. Plaintiffs request compensatory damages in the range of \$3,000,000 to \$6,000,000 each and punitive damages in the range of \$10,000,000 to \$15,000,000 each. A review of the relevant case law demonstrates that this request is in line with awards in prior cases involving the most serious of human rights abuses. *See, e.g., Jara v. Nunez*, No. 6:13-cv-1426-Orl-37GJK, 2016 WL 4013899 (M.D. Fla. June 29, 2016) (awarding \$6,000,000 in compensatory and \$10,000,000 in punitive damages for torture and extrajudicial killing, plus \$36,000,000 in combined compensatory and punitive damages to decedent's relatives); *Ahmed v. Magan*, No. 2:10-cv-00342, 2013 WL 5493032 (S.D. Ohio Oct. 2, 2013) (awarding \$5,000,000 in compensatory and \$10,000,000 in punitive damages for arbitrary detention and torture); *Saravia*, 348 F. Supp. 2d at 1158-59 (awarding \$5,000,000 in compensatory and \$5,000,000 in punitive damages for extrajudicial killing and crimes against humanity). *Samantar*, 2012 WL 3730617, at *14 (awarding \$1,000,000 in compensatory and \$2,000,000 per plaintiff in punitive damages for extrajudicial killing, attempted extrajudicial killing, torture, arbitrary detention and crimes against humanity); *Tachiona v. Mugabe*, 216 F. Supp. 2d 262, 280 (S.D.N.Y. 2002) (awarding \$2,500,000 in compensatory and \$5,000,000 in punitive damages per plaintiff for extrajudicial killing); *Arce v. Garcia*, No. 99-8364-CIV-HURLEY (S.D. Fla. July 31, 2002) (ECF Nos. 253-55) (awarding between \$3,100,000 and \$6,500,000 in compensatory damages and \$10,000,000 in punitive damage per plaintiff for kidnapping and torture); *Mehinovic v. Vuckovic*, 198 F. Supp. 2 1322, 1358-60 (N.D. Ga. 2002) (awarding \$10,000,000 in compensatory and either \$10,000,000 or \$25,000,000 per plaintiff in punitive damages per plaintiff for torture and other crimes against humanity); *Mushikiwabo*, 1996 WL 164496, at *3 (awarding between \$10,700,00 and \$35,200,000 per plaintiff in combined compensatory and punitive damages for torture and extrajudicial killing); *Xuncax*, 886 F. Supp. at 198 (awarding \$2,000,000 in compensatory and \$5,000,000 in punitive damages per plaintiff for summary execution).

In the cited human rights abuse cases, courts awarded individual plaintiffs anywhere from \$3,000,000 to approximately \$35,000,000 in combined compensatory and punitive damages. *See, e.g., Samantar*, 2012 WL 3730617, at *14; *Mushikiwabo*, 1996 WL 164496, at *3. Here, similar to these cases, the acts committed against Plaintiffs were unspeakably brutal, Defendant's own role in overseeing these acts was beyond egregious, no criminal remedy is readily available notwithstanding condemnation of the massacre by both leading governmental and nongovernmental organizations, and a significant award may provide Plaintiffs a measure of

BY THE COURT:

/s/ Lynne A. Sitarski
LYNNE A. SITARSKI
United States Magistrate Judge

redress while deterring future human rights abuse. For these reasons, the Court will award each Plaintiff \$6,000,000 in compensatory damages and \$15,000,000 in punitive damages, which is well within the aforementioned ranges.