

**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

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.”¹ 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.

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,² leaving a procedure ill-adapted to an early twenty-first century caseload.³ Haiti has not ratified many of the international conventions that could help with the prosecution of human rights cases.⁴ The judiciary has little experience with human rights trials or complex cases, and

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.⁵

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.⁶

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: réformer la justice en Haïti*, Nat'l Coal. for Haitian Rts. (Mar. 1995), 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.⁷ 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"⁸

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.⁹

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.¹⁰

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

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.¹¹

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

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 2006,¹² 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

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,”¹³ and Amnesty International called “contrary to the Haitian constitution.”¹⁴ 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

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.¹⁵

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

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.¹⁶ 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.¹⁷ The Martelly and Moïse

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 (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.¹⁸

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."¹⁹

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.

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.²⁰

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.²¹ 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.²²

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.²³ 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.²⁴ 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,²⁵ and appears to have fled to the United States.²⁶

72. According to Defendant's passport stamps, he largely remained in the United States until August 2012,²⁷ 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

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.²⁸

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

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.²⁹

* * *

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

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,³⁰ 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,³¹ 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

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.³² *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.³³

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.”³⁴

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

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.³⁵ The court also assessed a total of 3 million gourdes (\$53,500) in civil damages against them.³⁶ To my knowledge, despite the judgment, Plaintiffs have never been able to recover any of these awarded funds, which is

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*.³⁷ 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;³⁸ 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, 2012,³⁹ and a public complaint on OPL letterhead that was delivered to MINUSTAH, the UN peacekeeping mission

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;⁴⁰ filing a separate complaint with MINUSTAH on October 21, 2008;⁴¹ 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;⁴² visiting the U.S. embassy on December 22, 2008;⁴³ and successfully pursuing precautionary measures with the Inter-American Commission on Human Rights, ordered on July 28, 2015.⁴⁴

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.

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.⁴⁵ 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

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.⁴⁶ 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.⁴⁷

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.⁴⁸ 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.⁴⁹

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

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.⁵⁰

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.⁵¹

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.⁵² 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.⁵³ 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.⁵⁴ 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*.⁵⁵ 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

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.⁵⁶ 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

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).