

**NIGHT BOX
FILED**

MAR 14 2003

**CLARENCE MADDOX
CLERK, USDC / SDPL / MIA**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division**

CASE NO.: 03-20161-CIV-KING

MAGISTRATE JUDGE: O'SULLIVAN

Marie Jeanne Jean, in her individual
 capacity, and as parent and legal
 Guardian for minors, Vladimir Pierre
 and Michelleda Pierre,

 Plaintiffs,

 v.

 Carl Dorélien,

 Defendant.

**ANSWER AND
AFFIRMATIVE DEFENSES**

Defendant Carl Dorélien, by and through undersigned counsel, hereby files his *Answer and Affirmative Defenses*, and states as follows:

1. Defendant admits that this is a civil action for compensatory and punitive damages but denies the remaining allegations contained in paragraph 1 of the Complaint and therefore demands strict proof thereof.
2. Defendant denies the allegations contained in paragraph 2 of the Complaint and thereof denies strict proof thereof.
3. Defendant denies the allegations contained in paragraph 3 of the Complaint and thereof denies strict proof thereof.
4. Defendant admits that he was a Colonel in the Armed Forces of Haiti but denies the remaining allegations contained in paragraph 4 of the Complaint and therefore demands strict proof thereof.

5. Defendant is without knowledge of the allegations contained in paragraph 5 of the Complaint and therefore demands strict proof thereof.
6. Defendant is without knowledge of the allegations contained in paragraph 6 of the Complaint and therefore demands strict proof thereof.
7. Defendant is without knowledge of the allegations contained in paragraph 7 of the Complaint and therefore demands strict proof thereof.
8. Defendant is without knowledge of the allegations contained in paragraph 8 of the Complaint and therefore demands strict proof thereof.
9. Defendant is without knowledge of the allegations contained in paragraph 9 of the Complaint and therefore demands strict proof thereof.
10. Defendant denies the allegations contained in paragraph 10 of the Complaint and therefore demands strict proof thereof.
11. Defendant denies the allegations contained in paragraph 11 of the Complaint and thereof denies strict proof thereof.
12. Defendant denies the allegations contained in paragraph 12 of the Complaint and thereof denies strict proof thereof.
13. Defendant denies the allegations contained in paragraph 13 of the Complaint and thereof denies strict proof thereof.
14. Defendant denies the allegations contained in paragraph 14 of the Complaint and thereof denies strict proof thereof.
15. Defendant denies the allegations contained in paragraph 15 of the Complaint and thereof denies strict proof thereof.

16. Defendant denies the allegations contained in paragraph 16 of the Complaint and thereof denies strict proof thereof.

17. Defendant denies the allegations contained in paragraph 17 of the Complaint and thereof denies strict proof thereof.

18. Defendant denies the allegations contained in paragraph 18 of the Complaint and thereof denies strict proof thereof.

19. Defendant admits the allegations contained in paragraph 19 of the Complaint.

20. Defendant denies the allegations contained in paragraph 20 of the Complaint and thereof denies strict proof thereof.

As To First Claim For Relief
(Extrajudicial Killing)

21. Plaintiffs reallege and incorporate paragraphs 1 through 20.

22. Defendant is without knowledge of the allegations contained in paragraph 22 of the Complaint and therefore demands strict proof thereof.

23. Defendant denies the allegations contained in paragraph 23 of the Complaint and thereof denies strict proof thereof.

24. Defendant denies the allegations contained in paragraph 24 of the Complaint and thereof denies strict proof thereof.

25. Defendant denies the allegations contained in paragraph 25 of the Complaint and thereof denies strict proof thereof.

26. Defendant denies the allegations contained in paragraph 26 of the Complaint and thereof denies strict proof thereof.

27. Defendant denies the allegations contained in paragraph 27 of the Complaint and thereof denies strict proof thereof.

28. Defendant denies the allegations contained in paragraph 28 of the Complaint and thereof denies strict proof thereof.

29. Defendant denies the allegations contained in paragraph 29 of the Complaint and thereof denies strict proof thereof.

As To Second Claim For Relief
(Crimes Against Humanity)

30. Plaintiffs recallage and incorporate paragraphs 1 through 20.

31. Defendant denies the allegations contained in paragraph 31 of the Complaint and thereof denies strict proof thereof.

32. Defendant denies the allegations contained in paragraph 32 of the Complaint and thereof denies strict proof thereof.

33. Defendant denies the allegations contained in paragraph 33 of the Complaint and thereof denies strict proof thereof.

34. Defendant denies the allegations contained in paragraph 34 of the Complaint and thereof denies strict proof thereof.

AFFIRMATIVE DEFENSES

Lack of Standing

35. As for his First Affirmative Defense, Defendant Carl Dorélien alleges that Plaintiff Marie Jeanne Jean lacks standing to bring the instant action because she is not the legal spouse of Michel Pierre. Defendant further alleges that Plaintiffs Vladimir Pierre and Michelleda Pierre lack standing to bring the instant action because they are not the natural-born and/or legal children of Michel Pierre and/or Plaintiff Marie Jeanne Jean. Moreover, Michel Pierre's death was not the result of the incident alleged in the Complaint and therefore Plaintiffs for their lack standing to bring the instant action

Lack of Jurisdiction Over the Subject Matter

36. As for his Second Affirmative Defense, Defendant Carl Dorélien alleges lack of jurisdiction over the subject matter of the instant action.

Forum Non Conveniens

37. As for his Third Affirmative Defense, Defendant Carl Dorélien alleges *forum non conveniens*. The alleged incident arises out of events or omissions that occurred in Haiti. The courts in Haiti have jurisdiction over this action and are an adequate forum for the instant action. Haiti has a public interest greater than that of the United States as the alleged incident occurred in Haiti. Adjudication of the instant action in this Court would be oppressive to Defendant as he is currently incarcerated in Haiti pursuant to a sentence of life imprisonment. Defendant's inability to appear and participate in this forum for any aspect of the instant action, access to sources of proof, the cost of transporting witnesses and the local interest of Haiti in this cause of action weigh heavily in favor of dismissal of this action.

Personal Jurisdiction

38. As for his Fourth Affirmative Defense, Defendant Carl Dorélien alleges that this Court does not have jurisdiction over Defendant because he no longer resides in the United States and is currently incarcerated in Haiti pursuant to a sentence of life imprisonment. Additionally, at all times material hereto, Defendant was an official of a foreign sovereign and is being sued in his official capacity and is therefore immune from suit. Plaintiffs fail to allege in the Complaint an applicable exception to immunity.

Improper Venue

39. As for his Fifth Affirmative Defense, Defendant Carl Dorélien alleges that this Court is not the proper venue for the instant action. At all times material hereto, Defendant was an agent of a foreign sovereign or its instrumentalities and is therefore immune from suit in this Court. This Court has equitable discretion to transfer or dismiss this action. Furthermore, Defendant is currently incarcerated in Haiti pursuant to a sentence of life imprisonment and no longer resides in the United States, therefore venue is improper in this Court.

Failure to Join Indispensable Parties

40. As for his Sixth Affirmative Defense, Defendant Carl Dorélien alleges that Plaintiffs failed to join indispensable parties necessary to a just adjudication of the claims alleged herein in that Plaintiffs did not join the Armed Forces of Haiti and any of its components, the High Command and its members, the Government of Haiti and any of its instrumentalities, high officials in the political/military chain of command, FRAPH and the paramilitary forces of Haiti.

Res Judicata

41. As for his Seventh Affirmative Defense, Defendant Carl Dorélien alleges *res judicata*. Defendant was convicted in absentia in a trial in Haiti and is subject to loss of property, payment of restitution and civil fines, which may be available to compensate Plaintiffs for their alleged damages.

Setoff

42. As for his Eighth Affirmative Defense, Defendant Carl Dorélien alleges setoff of any restitution or monetary damages available or obtained in Haiti to compensate Plaintiffs for their alleged damages against any money judgment rendered in this action.

Laches

43. As for his Ninth Affirmative Defense, Defendant Carl Dorélien alleges laches because Plaintiffs failed to bring the instant action within a reasonable period of time after the alleged incident occurred and thereby prevent the Defendant from preparing an adequate defense. The incident is alleged to have occurred during April 1994, approximately nine (9) years ago. Furthermore, adjudication of the instant action in this Court would be oppressive to Defendant as he is currently incarcerated in Haiti pursuant to a sentence of life imprisonment and is being forced to defend himself in this jurisdiction where he no longer resides. Plaintiffs' neglect in asserting their claims within a reasonable period of time has prejudiced Defendant.

Act of State Doctrine

44. As for his Tenth Affirmative Defense, Defendant Carl Dorélien alleges that because the incident alleged in the Complaint necessarily entails considerations of the legality of official acts or omissions of a foreign sovereign and/or its officials performed on its own territory, the Act of State Doctrine precludes this Court from rendering a decision upon the merits. Plaintiffs allege in the Complaint that Defendant was, at the time of the alleged acts or omissions, a high military official of a foreign sovereign acting under actual or apparent authority of the laws of Haiti in the discharge of his command responsibilities.

Failure to Exhaust Adequate and Available Remedies

45. As for his Eleventh Affirmative Defense, Defendant Carl Dorélien alleges that by Plaintiffs failing to exhaust adequate and available remedies in Haiti as required pursuant to 28 U.S.C. §1350, Plaintiffs have deprived this Court of subject matter jurisdiction. Plaintiffs merely allege that they "lack any ability to obtain an enforceable judgment for reparations in Haiti against Defendant". Plaintiffs have failed to meet the statutory prerequisite.

Lack of Jurisdiction

46. As for his Twelfth Affirmative Defense, Defendant Carl Dorélien alleges that this Court lacks jurisdiction over the parties and the subject matter of the instant action pursuant to the statutes and/or laws contained in the Complaint.

Nonjusticiable Political Question

47. As for his Thirteenth Affirmative Defense, Defendant Carl Dorélien alleges that the actions complained of herein raise nonjusticiable political questions with no judicially discoverable standards for resolution and it would be an abuse of its discretion for this Court to render a decision upon the merits.

Sovereign Immunity

48. As for his Fourteenth Affirmative Defense, Defendant Carl Dorélien alleges that Defendant in the instant action is immune from suit in this Court. At all times material hereto, Defendant was an official of a foreign sovereign and is being sued in his official capacity and is therefore immune from suit. Plaintiffs fail to allege an applicable exception to immunity.

Failure to Attach Documents

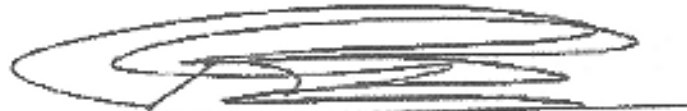
49. As for his Fifteenth Affirmative Defense, Defendant Carl Dorélien alleges that Plaintiffs failed to attach documents to the Complaint evidencing that they have exhausted, or attempted to exhaust, any adequate and available remedy in Haiti pursuant to 28 U.S.C. §1350.

Failure of Condition Precedent

50. As for his Sixteenth Affirmative Defense, Defendant Carl Dorélien alleges that Plaintiffs failed to satisfy the condition precedent of exhausting adequate and available remedies in Haiti pursuant to 28 U.S.C. §1350 prior to instituting the instant action.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by facsimile and U.S. mail to: **Stephen F. Rosenthal, Esquire**, Podhurst, Orseck, Josefsberg, Eaton, et al., City National Bank Building, Suite 800, 25 West Flagler Street, Miami, Florida 33130; **Joshua N. Sondheimer, Esquire**, The Center of Justice and Accountability, 870 Market Street, Suite 684, San Francisco, California 94102; and, **Matthew J. Eisenbrandt, Esquire**, The Center of Justice and Accountability, 870 Market Street, Suite 684, San Francisco, California 94102; this 17th day of March 2003.



Richard E. Basha, Esq.
Fla. Bar No.: 930245
RICHARD E. BASHA & ASSOC., P.A.
Counsel for Defendant
Colonial Bank Building
600 South Andrews Avenue
Suite 302
Fort Lauderdale, Florida 33301
Telephone: (954) 523-4882
Telefax: (954) 462-8240
E-Mail: RBashaPA@aol.com