

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case No. 03-20161 CIV-KING

MARIE JEANNE JEAN, in her individual
capacity, and as parent and legal
guardian for minors VLADIMY PIERRE
and MICHELDA PIERRE, and
LEXIUSTE CAJUSTE,

Plaintiffs,

v.

CARL DORÉLIEN,
and LUMP SUM CAPITAL, LLC
a Maryland limited liability company,

Defendants.

**PLAINTIFFS MARIE JEANNE JEAN, VLADIMY PIERRE AND MICHELDA
PIERRE'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT
CARL DORÉLIEN'S MOTION TO DISMISS IMPROPER VENUE (D.E. 53)**¹

Plaintiffs Marie Jeanne Jean, in her individual capacity, and as legal guardian for minors Vladimyr Pierre and Michelda Pierre (collectively, "Plaintiffs"), hereby respond in opposition to Defendant Carl Dorélien's Motion to Dismiss Improper Venue (D.E. 53), (the "Motion"). The Motion should be denied for the following reasons:

¹ On April 6, 2004, the Court granted Defendant Dorélien's Motion for Judgment on the Pleading Statute of Limitation, as against Plaintiff Lexiuste Cajuste – on the grounds that Cajuste's human rights claims are barred by the applicable ten year statute of limitations. Cajuste will soon seek review of the Court's decision by motion for reconsideration and/or an appeal to the Eleventh Circuit. Because Cajuste is a resident of Florida, any order dismissing this case on the grounds that Plaintiff Marie Jeanne Jean, and the minor Plaintiffs Vladimyr Pierre and Michelda Pierre are residents of Haiti, would be subject to reconsideration if Cajuste is reinstated as a Plaintiff in this case. Accordingly, Plaintiffs request that the Court reserve ruling on this motion, pending the resolution of Cajuste's motion for reconsideration and/or appeal. Further, Plaintiffs request that if Cajuste is reinstated, the Court allow them to submit a supplemental brief in opposition to this motion.

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MIAMI DIVISION
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I. INTRODUCTION

A. Summary of the Case.

Defendant Carl Dorélien ("Dorélien") was a Colonel in the Haitian Armed Forces and a member of the High Command of the military dictatorship that ruled Haiti during the three year period from October 1991 to September 1994. During that period, Dorélien planned, ordered, authorized, and permitted his subordinates in the Haitian Armed Forces and related paramilitary organizations to commit gross human rights violations, including the extra-judicial killing of Michel Pierre, the late husband of Plaintiff Marie Jeanne Jean and the father of her children, Plaintiffs Vladimyr Pierre and Michelda Pierre. Plaintiffs have filed this lawsuit to recover compensatory and punitive damages for Michel Pierre's murder at the hands of troops and paramilitaries under Dorélien's command and control.

Michel Pierre was killed during the "*Raboteau Massacre*" which took place on April 18 and 22, 1994, in Raboteau, an impoverished seaside neighborhood on the outskirts of the city of Gonaïves, Haiti. During the massacre, at least 26 unarmed civilians, including Michel Pierre, were shot and killed, and more than 50 homes were destroyed. (See Second Amended Complaint (D.E. 37), at pp. 5-6, ¶¶ 16-17.) Plaintiffs assert claims against Dorélien for:

- (1) Extra-judicial Killing, pursuant to the *Torture Victim Protection Act*, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note), and customary international law and the *Alien Tort Claims Act*, 28 U.S.C. § 1350;
- (2) Crimes Against Humanity, pursuant to customary international law and the *Alien Tort Claims Act*, 28 U.S.C. § 1350; and
- (3) Relief from Fraudulent Transfer, pursuant to Florida's *Uniform Fraudulent Transfer Act*, Section 726.101, et seq., Florida Statutes.

(See Second Amended Complaint (D.E. 37), at ¶¶ 32-40 (Extra-judicial Killing); ¶¶ 69-72 (Crimes Against Humanity); and ¶¶ 73-95 (Fraudulent Transfer).)

Plaintiffs' claim for relief from fraudulent transfer pursuant to Florida's *Uniform Fraudulent Transfer Act*, Section 726.01, Florida Statutes, et seq., arises from Dorélien's attempt to assign a Florida Lottery prize that he won while he was living in South Florida to Defendant Lump Sum Capital, LLC ("LSC"). As the evidence filed in the record shows, Dorélien has entered into a Lottery Prize Assignment Agreement with LSC, pursuant to which Dorélien will assign/transfer the remainder of his lottery prize (consisting of 13 annual installments of \$159,000) to LSC, in exchange for a lump sum payment of \$1.3 million. The evidence shows that Dorélien's attorney, Christian Scholin, (who is a specialist in "asset protection") has instructed LSC to pay the proceeds from the assignment – over \$1 million – to Dorélien's son, Karl-Steven Dorélien. Finally, the evidence, including Karl-Steven Dorélien's deposition testimony, proves beyond any reasonable doubt that the assignment/transfer of the lottery payments is intended to convert Dorélien's lottery payments into a lump sum, and then place the over \$1 million in proceeds beyond the reach of Dorélien's creditors, *especially Plaintiffs*.

B. Dorélien's Motion to Dismiss Improper Venue.

Now, more than one year after Plaintiffs filed this suit, and only after this Court has entered a temporary restraining order (the "TRO") to prevent the completion of the fraudulent transfer, Dorélien moves to dismiss for improper venue pursuant to Rule 12(b)(3), Federal Rules of Civil Procedure. Dorélien argues that venue is improper because: (1) Dorélien and Plaintiffs are in Haiti; (2) the *Torture Victim Protection Act of 1991* requires that Plaintiffs exhaust all adequate and available remedies in Haiti; and (3) the Affidavit of Mario Joseph, filed by Plaintiffs, shows that there are adequate and available remedies in Haiti. (See Motion to Dismiss Improper Venue (D.E. 53).) As explained below, these arguments are without merit, and Dorélien's Motion to Dismiss Improper Venue should be denied.

II. MEMORANDUM OF LAW

A. Dorélien's Motion is barred as untimely by Fed. R. Civ. P. 12(b).

Dorélien's Motion to Dismiss Improper Venue made pursuant to Rule 12(b)(3), Federal Rules of Civil Procedure, is barred as untimely because, according to Rule 12(b), Dorélien was only entitled to assert lack of venue by motion, in response to the original complaint. Rule 12(b) provides in pertinent part:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: ... (3) improper venue
A motion making any of these defenses shall be made before pleading if a further pleading is permitted. ...

Fed. R. Civ. P. 12(b) (emphasis added). The requirement of Rule 12(b) that "a motion making any of these defenses shall be made before pleading if a further pleading is permitted," means that a defendant has only one chance to assert the defense of improper venue by motion and that is in response to the initial complaint. If a defendant fails to assert the defense by motion at that time, his right to do so is waived, and he may assert the defense only in his answer. Dorélien declined to serve any defensive motion to Plaintiffs' original complaint. Instead, he raised the issue of venue in his first Answer and Affirmative Defenses. (See Answer and Affirmative Defenses (D.E. 11) at p. 6, ¶ 39 (pleading improper venue as affirmative defense). Dorélien may not now assert any defense of improper venue by motion to dismiss.

B. Dorélien's Motion is barred by Fed. R. Civ. P. 12(g).

In the alternative, Dorélien's Motion to Dismiss Improper Venue pursuant to Rule 12(b)(3), Federal Rules of Civil Procedure is barred by Rule 12(g), Federal Rules of Civil Procedure, which prohibits serial motions asserting defenses under Rule 12(b). Here, Dorélien's

Motion to Dismiss Improper Venue is the second of three motions to dismiss filed by Dorélien pursuant to Rule 12(b), Federal Rules of Civil Procedure. Dorélien's Rule 12(b) motions are:

- (1) Dorélien's Motion to Dismiss: Lack of Jurisdiction Over the Person and Insufficiency of Service of Process, Insufficiency of Process (D.E. 52);
- (2) Dorélien's Motion to Dismiss Improper Venue (D.E. 53); and
- (3) Dorélien's Motion to Dismiss Improper Venue Re: Lottery Winnings (D.E. 58).

Once his initial Motion to Dismiss (D.E. 52) was filed, Rule 12(g), precluded all later Rule 12(b) motions, including Dorélien's Motion to Dismiss Improper Venue (D.E. 53) and the Motion to Dismiss Improper Venue Re: Lottery Winnings (D.E. 58). See Fed. R. Civ. P. 12(g); Skrtich v. Thornton, 280 F.3d 1295, 1306 (11th Cir. 2002) ("Rule 12(g) specifically prohibits a party that has previously filed a motion to dismiss from filing a second pre-answer motion to dismiss raising an omitted defense that could have been presented in the first motion to dismiss,..."); Albany Ins. Co. v. Almacenadora Somex, S.A., 5 F.3d 907, 909-910 (5th Cir. 1993).

In Albany Ins. Co., the defendants (Coello and Grupo Sanfer) filed Rule 12(b) motions to dismiss for lack of personal jurisdiction; then, nine days later, they filed motions to dismiss for improper venue under Rule 12(b)(3). Albany Ins. Co., 5 F.3d at 908. The Fifth Circuit Court of Appeals held that Defendants' second motion to dismiss for improper venue was barred by Rule 12(g):

Coello and Grupo Sanfer each filed a motion to dismiss, alleging one or more of the defenses in Rule 12(b). Each, however, omitted from their first motion an objection to venue based on the forum clauses. Thus, according [to] the consolidation requirement of Rule 12(g), they too were not permitted to make a further motion seeking enforcement of the forum clauses.

Id., at 910 (citation omitted). Like the defendants in Albany Ins. Co., Dorélien waived the right to challenge venue by motion pursuant to Rule 12(b)(3) when he failed to assert that defense in his first Motion to Dismiss (D.E. 52).

C. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (d).

Plaintiffs allege venue in paragraph 12 of the Second Amended Complaint:

12. On information and belief, Defendant Dorélien was an alien and a resident of the United States at the time he was served with the original complaint in this case. Therefore, venue is proper in the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. § 1391(b) and (d).

(See Second Amended Complaint (D.E. 37), at ¶ 12.) As the statutory basis for venue, Plaintiffs rely upon 28 U.S.C. § 1391(1) (b) and (d), which provide, in pertinent part:

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) *a judicial district where any defendant resides*, if all defendants reside in the same state, ... (3) *a judicial district in which any defendant may be found*, if there is no district in which the action may otherwise be brought.

(d) *An alien may be sued in any district.*

See 28 U.S.C. § 1391(1) (b) and (d) (emphasis added).

Defendant Carl Dorélien admits the factual basis for venue:

(1) Dorélien claims he was a resident of Port St. Lucie, Florida, at the time that he was served with the original complaint. (See Deposition of Karl-Steven Dorélien (D.E. 46), at p 51, line 3 to p. 52, line 13; and Exhibit 4 to Dorélien Depo., Assignment Agreement, at LSC-000007, ¶ E(1), and LSC-000006, paragraph above "RECITALS." (Dorélien represented and warranted that he was a resident of Port St. Lucie for the twelve (12) months before November 25, 2003); Deposition of Karl-Steven Dorélien (D.E. 46), at p. 57, line 14 to p. 60, line 11, and Exhibit 5 to Dorélien Depo., Affidavit of Carl Dorélien, at LSC-000013, ¶ 1 (Carl Dorélien swore under oath that he was a resident of Florida).)

(2) Dorélien was found at the Krome Detention Center in Miami-Dade County at the time he was served with the original complaint. (See Motion to Dismiss: Lack of Jurisdiction

Over the Person and Insufficiency of Service of Process, Insufficiency of Process (D.E. 52), at p. 2, ¶ 3.)

(3) Dorélien is an alien. (See *Id.*, at p. 2, ¶¶ 3-4.)

Thus, venue is proper in this Court; and Dorélien's Motion to Dismiss should be denied.

D. Dorélien's argument that Plaintiffs have failed to exhaust their remedies in Haiti is without merit.

Dorélien argues that Plaintiffs' claims should be dismissed because they have not exhausted their remedies in Haiti, as required by Section 2(b) of the *Torture Victim Protection Act of 1991*, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note).

Section 2(b) of the *Torture Victim Protection Act*, provides:

A court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred.

See 28 U.S.C. 1350 note, § 2(b). Dorélien's exhaustion of remedies argument fails for the following reasons.

1. *Plaintiffs are not required to exhaust their remedies to Haiti in order to assert their claims under the Alien Tort Claims Act.*

Plaintiffs asserting claims under the *Alien Tort Claims Act* are not required to exhaust their remedies in the state in which the alleged violations of customary international law occurred. See *Abiola v. Abubakar*, 267 F. Supp. 2d 907, 910 (N.D. Ill. 2003); *Sarei v. Rio Tinto PLC*, 221 F. Supp. 2d 1116, 1132-1135 (C.D. Cal. 2002) ("The court is not persuaded that Congress' decision to include an exhaustion of remedies provision in the TVPA indicates that a parallel requirement must be read into the ATCA." – relying on *Kadic v. Karadzic*, 70 F.3d 232, 241 (2d Cir. 1995)). See also *Jama v. I.N.S.*, 22 F. Supp. 2d 353, 364 (D.N.J. 1998) ("There is nothing in the ATCA which limits its application to situations where there is no relief available under domestic law" – referencing availability of other causes of action under U.S. law).

In Kadic v. Karadzic, 70 F.3d 232 (2d Cir. 1995), which the Sarei court cited, the Second Circuit Court of Appeals held that "[t]he scope of the Alien Tort Act remains undiminished by enactment of the Torture Victim Act." Kadic, 70 F.3d at 241. The Kadic court did not apply the *Torture Victim Protection Act* exhaustion of remedies requirement to the plaintiffs' *Alien Tort Claims Act* claims for torture and summary execution, even though plaintiffs asserted the same claims under the TVPA. Id., at pp. 243-244. Thus, the exhaustion of remedies requirement does not apply to claims under the *Alien Tort Claims Act* and customary international law, even if plaintiffs also seek recovery under the *Torture Victims Protection Act*.

As Plaintiffs' claims for extra-judicial killing (Count One), and crimes against humanity (Count Five) are pursuant to the *Alien Tort Claims Act* and customary international law, Plaintiffs need not show that they have exhausted their remedies in Haiti. The exhaustion of remedies requirement would be pertinent to Plaintiffs' claim for extra-judicial killing (Count One) only if it were based solely on the *Torture Victim Protection Act*.

2. *Plaintiffs have exhausted whatever remedies were available in Haiti; and those remedies are not adequate or available anymore.*

Dorélien bears the initial burden of demonstrating that Plaintiffs have not exhausted adequate available remedies in Haiti. See Estate of Rodriguez v. Drummond Co., Inc., 256 F. Supp. 2d 1250, 1267 (N.D. Ala. 2003); Wiwa v. Royal Dutch Petroleum Co., No. 96 CIV. 8386(KMW), 2002 WL 319887, at *17 (S.D.N.Y. Feb. 28, 2002); Sinaltrainal v. The Coca-Cola Co., 256 F. Supp. 2d 1345, 1358 (S.D. Fla. 2003)²; and Hilao v. Estate of Marcos, 103 F.3d 767, 778 n. 5 (9th Cir. 1996). As explained below, Dorélien has not carried his burden.

Dorélien asserts "Plaintiffs have filed an affidavit of Haitian lawyer, Mario Joseph, who

² Although the Sinaltrainal court interpreted the defendants' argument that the plaintiffs' had not exhausted their remedies in Colombia as a challenge to subject matter jurisdiction, other district courts have found that exhaustion of foreign remedies is *not* jurisdictional. See Estate of Cabello v. Fernandez Larios, 291 F. Supp. 2d 1360, 1364-1365 (S.D. Fla. 2003) (§2(b) of the *Torture Victim Protection Act* is not jurisdictional – citing cases).

argues therein that adequate remedies are and have been available in Haiti." (See Motion (D.E. 53) at p. 2.) Dorélien is mistaken. Nowhere does Mario Joseph state that there are adequate remedies available in Haiti. Indeed, Mario Joseph's affidavit actually supports Plaintiffs' position that Haiti does *not* provide Plaintiffs with an adequate available remedy.

In his affidavit, Mario Joseph states that in the fall of 2000, Dorélien was convicted *in absentia* before a Haitian Court for his role in the Raboteau Massacre and was ordered to pay restitution to the victims, including Plaintiffs. Significantly, Joseph states that when Dorélien was deported to Haiti in January 2003, he became entitled to have the Haitian judgment set aside by requesting a new trial; but that, as of the date of Joseph's affidavit, Dorélien had not exercised that right. (See Affidavit of Mario Joseph (D.E. 42).)

As Mario Joseph points out, Dorélien has ten (10) years – to the fall of 2010 – to request a new trial and set the judgment aside. (Id.) Prior to the ouster of President Aristide in February 2004, Dorélien had not requested a new trial. The reason is obvious: due to his guilt, Dorélien knew that he had little chance of overturning the Haitian judgment as long as his cronies were not in power, and his victims were relatively safe and prepared to testify against him. Thus, Dorélien decided to bide his time and wait for a change in regime.

In the meantime, however, Dorélien had a problem: the Haitian judgment was still legally in effect, he was being sued by Plaintiffs in this case, and he had to protect his \$2 million Florida Lottery prize from his victims. Accordingly, he decided to convert his lottery winnings into a lump sum, and transfer that sum – over \$1 million – to his son, Karl-Steven for safe keeping, in violation of Florida's *Uniform Fraudulent Transfer Act*.

Dorélien's strategy of waiting for a change in regime paid off when, in February of this year, his paramilitary accomplices from the Haitian Military dictatorship overthrew President

Aristide. Dorélien, who was serving his life sentence for the Raboteau Massacre, was promptly released from prison without legal process.

Even though, under Haitian law Dorélien's conviction still remains in effect, it is now for all practical purposes a nullity. (See Ex. "A," Declaration of Brian Concannon, Jr., at pp. 2-3, ¶¶ 3-7; Ex. "B," "Rights abusers going free from Haitian prisons," by Jim DeFede, Miami Herald, March 4, 2004; Ex. "C," "Abusers back on the streets; Some of Haiti's most notorious human rights abusers walk the streets openly now," by Trenton Daniel and Susannah A. Nesmith, Miami Herald, March 15, 2004.) *Dorélien's extra-judicial and illegal release from prison proves there are no adequate remedies available in Haiti. If there were, Dorélien would have remained in jail until he requested a new trial.*

Now, under the new regime, the money judgment against Dorélien is of no force or effect. Indeed, under the new regime, none of his victims will attempt to enforce the money judgment against Dorélien in Haiti; and if Dorélien were to request a new trial, none of his victims would dare to testify against him – *to do so would probably be fatal.* (See Ex. "A," Concannon Declaration, at pp. 2-3, ¶¶ 3-7.) As Plaintiffs' expert witness states:

Although the persons convicted in the Raboteau case were ordered to pay compensation to the victims, including Marie Jeanne Jean, none of the victims could now assert their claims without being at grave risk. It is completely unsafe and impossible, due to the current ineptitude of the Haitian judicial system, for the victims to collect the money the defendants were ordered to pay them. The defendants who were convicted *in absentia*, like Dorélien, have the right to ask for a new trial. If any defendant sought a new trial, the victims would be in too much danger to bring claims or testify against him.

(*Id.* at ¶ 7.)³

There are no longer any adequate and available remedies in Haiti because some of the

³ Similarly, it has been futile for Plaintiffs to attempt to domesticate the Haitian judgment because all Dorélien had to do to have the judgment set aside was request a new trial. Plaintiffs have never had the opportunity to collect on the Haitian judgment. Should Dorélien concede that the Haitian judgment is effective and stipulate to its domestication, the Court could retain jurisdiction over the lottery payments or the proceeds of the assignment pending domestication of the judgment; and Plaintiffs could then execute against the fund.

architects of the Raboteau Massacre are now in power in Haiti. Two of the top leaders of the rebellion that toppled Aristide are Louis Jodel Chamblain and Jean Pierre, a.k.a. Jean Tatoune, both of whom were convicted of murder *in absentia* for their participation in the Raboteau Massacre. These men now hold great power in Haiti and are responsible for the murder and intimidation of many people. (See Ex. "A," Concannon Declaration, at p. 2, ¶¶ 4-5.) ***Indeed, only about a week ago, Judge Napela Saintil, the Haitian judge who presided at the trial of Dorélien, Chamblain, Tatoune, and the other perpetrators of the Raboteau Massacre, was attacked and beaten by armed men acting on behalf of Chamblain.*** In January, forces opposed to the Aristide government set fire to the house of the chief prosecutor in the Raboteau case. (Ex. "A," Concannon Declaration, at p. 3, ¶ 6; Ex. "D," Highlights of Radio Metropole broadcast on April 3, 2004, ("Unidentified armed individuals beat up Judge Napela Saintil in the Croix-des-Bouquets area last night. According to the Haitian Rights Defense Organization, NCHR, the armed men blamed the judge for allegedly having adopted judicial decisions against Louis Jodel Chamblain); Ex. "E," Excerpt of January 16, 2004 broadcast by Haitian Radio Vision 2000 ("opposition supporters set fire to the house of Public Prosecutor Freneau Cajuste").)

Amnesty International is gravely concerned about the beating of Judge Saintil and its implications for the Haitian justice system. In an April 8, 2004 media briefing, Amnesty International stated:

Amnesty International is particularly concerned for the safety of judges, prosecutors, criminal investigators, victims, witnesses and human rights defenders involved in prosecutions relating to past human rights abuses. Judge Napela Saintil, the chief judge in the trial of those responsible for the 1994 Raboteau massacre, was severely beaten on 30 March by an armed man. The judge told Amnesty International delegates that his attacker had threatened him for the part he played in the conviction, *in absentia*, of Louis Jodel Chamblain, one of the participants in the massacre.

(See Ex. "F," "Amnesty International Media Briefing, "Haiti: Armed groups still active.

Findings of Amnesty International Delegation." April 8, 2004; and see Ex. "G," Amnesty International, "Haiti. Perpetrators of past abuses threaten human rights and the reestablishment of the rule of law." – summarizing how Dorélien and fellow perpetrators of Raboteau Massacre threaten rule of law in Haiti.)

Thus, Dorélien has not carried his burden of demonstrating that Plaintiffs have not exhausted remedies in Haiti. Moreover, Plaintiffs have shown that they have exhausted any remedies in Haiti, and that Haiti is not an adequate forum for relief. Although Plaintiffs obtained a money judgment against Dorélien, it is a *de facto* nullity and could be set aside at any time should Dorélien request a new trial; and Plaintiffs can neither enforce the judgment nor file a separate suit in Haiti because Dorélien's accomplices in the Raboteau Massacre are intimidating the judiciary, prosecution, witnesses, and the victims. See Wiwa, 2002 WL 319887, at *17 (finding Nigerian courts to be inadequate forum based on U.S. Department of State 2000 country report).

Section 2(b) of the *Torture Victim Protection Act* is satisfied, and Dorélien's motion to dismiss Count One of the Complaint based on Plaintiffs' alleged failure to exhaust remedies in Haiti should be denied. See Xuncax v. Gramajo, 886 F. Supp. 162, 178 (D. Mass. 1995) (exhaustion requirement of § 2(b) of the TVPA not intended to create stringent condition precedent for recovery under the statute, exhaustion of remedies in foreign forum generally not required when foreign remedies are unobtainable, ineffective, inadequate, or obviously futile).

E. Dorélien's motion, insofar as it purports to argue *forum non conveniens*, is without merit.⁴

1. *Dorélien's forum non conveniens argument is too late*

Insofar as Dorélien may be asserting a challenge on *forum non conveniens* grounds, he is too late. Nothing has changed since March 14, 2003 (more than one year ago), when Dorélien filed his first Answer, other than the fact that now, Plaintiffs have absolutely no chance of getting relief in Haiti. On the other hand, here in the United States, Plaintiffs have uncovered Dorélien's scheme to fraudulently transfer his assets and, with the aid of this Court, may actually collect on any judgment they obtain against him. We have the same plaintiffs and defendant as when Dorélien filed his initial Answer, and the location of the parties is the same. The difference is that now Dorélien knows he is essentially immune to suit and judgment-proof in Haiti, while the litigation process in the United States (particularly with this Court's entry of the TRO against him) might actually result in justice here.⁵ It is revealing that Dorélien never moved to dismiss for *forum non conveniens* until the TRO was entered. For Dorélien, this litigation is now "inconvenient" because it may provide Plaintiffs with an effective remedy.

⁴ Defendant's purported venue motion makes statements that appear to address the issue, not of whether venue is established, but that there is a more convenient forum. Plaintiffs will therefore treat the motion as alleging a *forum non conveniens* challenge as well. See Abiola v. Abubakar, 267 F. Supp. 2d 907, 918 (N.D. Ill, 2003) (treating challenge styled as one of "improper venue based on *forum non conveniens*" as a *forum non conveniens* challenge.) As the Court considers this issue, it should note the Abiola court's concerns:

A motion for dismissal on *forum non conveniens* grounds raises special concerns when the claims against the defendant are brought under the ATCA for torture and other human rights abuses. Dismissal "can represent a huge setback in a plaintiff's efforts to seek reparations for acts of torture" due to "the enormous difficulty of bringing suits to vindicate such abuses." *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 105, 106 (2d Cir. 2000). ... *Cf.* H.R.Rep. No. 102-367, pt. 1, at 3 (1991) ("Judicial protections against flagrant human rights violations are often least effective in those countries where such abuses are most prevalent. A state that practices torture and summary execution is not one that adheres to the rule of law. The general collapse of democratic institutions characteristic of countries scourged by massive violations of fundamental rights rarely leaves the judiciary intact.").

Abiola v. Abubakar, 267 F. Supp. 2d, at 918-19 (citations omitted).

⁵ In fact, with the addition of the count for fraudulent transfer, and the many ties that count has with the United States, this case is even less amenable to transfer for *forum non conveniens* than it was over a year ago.

As the Southern District stated in a case where the defendants filed a *forum non conveniens* motion eight months after they had answered the complaint and after the matter was set for trial, courts may either take a "dim view" of late-filed *forum non conveniens* motions, or simply deny them. See Lugones v. Sandals Resorts, Inc. 875 F. Supp. 821, 823 (S.D. Fla. 1994) (citing cases holding that tardiness "should weigh heavily against the granting" of the motion, or that courts may simply deny the motion as late, but choosing not to address the timeliness of the motion before it, as the motion failed on the merits). See also In re Air Crash Disaster, 821 F.2d 1147, 1165 (5th Cir. 1987) (untimeliness should weigh heavily against granting the motion), vacated and remanded on other grounds, Pan Am World Airways, Inc. v. Lopez, 490 U.S. 1032, 109 S. Ct. 1928, 104 L. Ed. 2d 400 (1989). The lateness of Dorélien's motion, coming over a year after his Answer and as trial approaches, weighs heavily against dismissal of this case.

2. *Even applying the forum non conveniens analysis, dismissal in favor of another forum is not an option in this case.*

In analyzing a *forum non conveniens* claim, the court must balance four factors: (1) whether, as a threshold issue, an adequate alternative forum exists which possesses jurisdiction over the whole case; (2) whether the parties' private interests weigh in favor of disturbing the strong presumption against disturbing the plaintiffs' initial forum choice; (3) whether the factors of public interest tip in favor of trial in a foreign forum; and (4) whether, if the previous three factors weigh in favor of transferring the case to a foreign forum, the plaintiffs can reinstate their suit without undue inconvenience or prejudice. See La Seguridad v. Transytur Line, 707 F.2d 1304, 1307 (11th Cir. 1983). To obtain dismissal for *forum non conveniens*, the defendant carries the burden to show that the factors "tilt strongly" in favor of trial in the foreign forum. See e.g., Ship Constr. & Funding Services (USA), Inc. v. Star Cruises PLC, 174 F. Supp. 2d 1320, 1325 (S.D. Fla. 2001) (unless the balance is strongly in favor of defendant, plaintiff's

choice of forum should rarely be disturbed) (per King, J.); Wiwa v. Royal Dutch Petroleum Co., 226 F.3d 88, 100 (2d Cir. 2000), cert. denied, 532 U.S. 941; 121 S. Ct. 1402, 149 L. Ed. 2d 345 (2001).

(a) Dorélien has not established that an adequate alternative forum exists.

(1) Defendant has failed to meet his burden on the threshold issue of adequate alternative forum.

As the court stated in Abiola v. Abubakar, 267 F. Supp. 2d 907, 918 (N.D. Ill, 2003):

The defendant's threshold burden is to demonstrate that an adequate alternative forum exists. Kamel, 108 F.3d at 802 ("As a practical matter, it makes little sense to broach the subject of *forum non conveniens* unless an adequate alternative forum is available to hear the case.")

Here, as in Abubakar, Dorélien has made no attempt to show the Court that Plaintiffs have an adequate remedy in the proposed forum and will be treated fairly there. Id. Dorélien's motion provides no support for his bald assertion that Haiti is an adequate alternative forum. It fails to even allege Plaintiffs will be treated fairly in Haiti.⁶ Thus, the motion should be denied.

(2) Haiti is neither an "available" nor "adequate" alternative forum.

(i) Haiti is not an available alternative forum because it does not have jurisdiction over the entire case and all defendants.

A foreign forum is "available" when the entire case and all parties can come within the jurisdiction of that forum. See In re Air Crash Disaster, 821 F.2d 1147, 1165 (5th Cir. 1987). Here, Haiti presumably does not have jurisdiction over Lump Sum Capital,⁷ and the evidence shows it does not exercise jurisdiction over Dorélien.⁸ Lack of jurisdiction over either Defendant

⁶ By contrast Plaintiffs provide affidavit testimony detailing the persecution of those involved in prosecuting claims for the Raboteau massacre and the breakdown of the rule of law in Haiti, particularly vis-à-vis the Defendant.

⁷ Lump Sum Capital is a Maryland limited liability company doing business in Florida, with its principal place of business in Bethesda, Maryland. (See Second Amended Complaint (D.E. 37), at ¶8.)

⁸ Now that his accomplices in the Raboteau Massacre have overthrown the government, Dorélien is once again

makes dismissal an erroneous decision. See e.g. Dole Food Co, Inc. v. Watts, 303 F.3d 1104, 1118 (9th Cir. 2002) (dismissal for *forum non conveniens* was not warranted where it was unclear whether one defendant was subject to jurisdiction in Netherlands); Jota v Texaco Inc., 157 F.3d 153, 155 (2d Cir. 1998) (dismissal of Ecuadorian residents/citizens' action against oil company on grounds of *forum non conveniens* and comity was erroneous where one defendant had not submitted to jurisdiction in Ecuador).⁹ Since it lacks jurisdiction over all Defendants, Haiti is not an available forum.

Moreover, Plaintiffs' claim against Lump Sum Capital is asserted pursuant to Florida's *Uniform Fraudulent Transfer Act* in connection with an asset located in Florida, namely Dorélien's lottery prize or the proceeds from the assignment of the prize. Even if Plaintiffs could file suit against Dorélien in Haiti, a Haitian court would still lack jurisdiction over this cause of action (see section b, below) and thus over the entire case. Clearly, Haiti is not an available alternative forum.

- (ii) Plaintiffs will be deprived of all remedies and treated unfairly in Haiti; thus, Haiti is not an adequate forum.

In addition to being available, the proposed alternate foreign must also be "adequate." An available forum is "adequate when the parties will not be deprived of all remedies or treated unfairly." Kamel v. Hill-Rom Co., Inc., 108 F.2d 802, 803 (7th Cir. 1997) (citing Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255 (1981)). Here, Dorélien's cronies and former co-defendants rule Haiti; the judge in the initial Raboteau case has been beaten up (for his work on the case); a mob has set fire to the Raboteau prosecutor's house; Dorélien has walked out of jail, with no

above the law in Haiti, particularly as concerns the Raboteau killings. (See section (ii), below.) His extra-judicial release from prison proves Haiti does not exercise jurisdiction over him.

⁹ In Jota, the court, in its early consideration, stated that if it were to dismiss on *forum non conveniens* grounds, *that it still "might retain jurisdiction over the injunctive portions of the action."* Jota, 157 F. 3d at 157. In the case at bar, it is crucial that the Court retain jurisdiction over the fraudulent transfer count and that the injunction against Lump Sum Capital not be dissolved.

legal process; and Plaintiffs are in grave danger. (See section D.2, above). Clearly, it is impossible for Plaintiffs to seek redress for the murder of Michel Pierre in Haiti. Thus, Haiti is not an adequate forum. Because Dorélien has failed to carry his burden to prove, as a threshold issue, that Haiti is an adequate and available alternate forum, this Court should end its inquiry here, and decline to dismiss this case.

(b) The weight of private interests is against dismissing this case in favor of the non-existent Haitian forum.

Relevant "private interests" include: (1) the relative ease of access to sources of proof; (2) the availability of compulsory process for unwilling witnesses; (3) the comparative cost of obtaining attendance of willing witnesses; (4) the possibility of a view of any affected premises; (5) the ability to enforce any judgment eventually obtained; (6) and all other practical problems that make trial of a case easy, expeditious and inexpensive. See Piper Aircraft Co., 454 U.S. at 241 n. 6, (citing to Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508, 67 S. Ct. 839, 843, 91 L. Ed. 1055 (1947)).

A balance of these interests is dominated by the fact that no judgment, including the prior restitution order against Dorélien, is enforceable in Haiti; whereas a judgment in this Court would be enforceable (Factor (5)). This is true not only because of problems in Haiti, but because Dorélien's lottery payments are in the United States. See ESI, Inc. v. Coastal Power Production Co., 995 F. Supp. 419, 427028 (S.D.N.Y. 1998) (denying motion to dismiss for *forum non conveniens* because judgment would be easier to enforce in U.S.); Exter Shipping, Ltd. v. Kilakos, 2004 U.S. Dist. LEXIS 5619 (N.D. Georgia) (holding that where none of the defendants had any identifiable property or assets in the United States, enforceability was not possible here, citing Republic of Panama v. BCCI Holdings (Luxembourg) S.A., 119 F.3d 935 at 953 (ordering *forum non conveniens* dismissal partly because the BCCI defendants had no

remaining assets in this country, rendering a United States judgment unenforceable). Here, Dorélien's lottery prize (over \$1 million) is in the United States, and will only be available if this Court retains jurisdiction.

As for Factors (2) and (3) (concerning willing and unwilling witnesses), Dorélien has failed to provide any information as to the particular witnesses who reside in Haiti who would be called. Such a list of witnesses has been held to be a prerequisite for *forum non conveniens* dismissal. Presbyterian Church of Sudan v. Talisman Energy, Inc., 244 F. Supp. 2d 289, 341 (S.D.N.Y. 2003) (citing Weltover, Inc. v. Republic of Argentina, 753 F.Supp. 1201, 1209 (S.D.N.Y. 1991), and Calavo Growers of California v Generali Belgium, 632 F.2d 963, 969 (2d Cir. 1980) (Newman, J., concurring) ("It will often be quicker and less expensive to transfer a witness or a document than to transfer a lawsuit.")). Regardless, the witnesses necessary to prove the fraudulent transfer count, which is critical to recovery, are in the United States – thus, this Court is a more adequate forum than Haiti. Only this Court can try all the counts.

Even if Dorélien had named witnesses so the Court could compare the relative merits of Haiti and Florida, Dorélien still would not carry his burden. If this case is dismissed, there will be no suit in Haiti, and no testimony to compel. As Plaintiffs cannot not bring a case in Haiti, all other factors, such as the other practical problems that make trial of a case easy, expeditious and inexpensive (Factor 6), likewise are not operative concerns.

Because a dismissal on *forum non conveniens* means that the Plaintiffs will never be able to pursue relief from Dorélien for his role in the killing of their husband and father, the private interest factors favor suit before this Court.¹⁰

¹⁰ Dorélien questions whether he and Plaintiffs can appear in Florida for trial. Plaintiffs plan to attend trial. As for Dorélien, arrangements may be made to preserve his testimony for trial; or, if the Court permits he may appear and testify by video conference. Moreover, to dismiss this action because Dorélien was deported would fly in the face of nearly twenty five years of jurisprudence of ATCA and TVPA cases. For example, in the seminal case of Filartiga

(c) **It is in the public interest to keep the case in the Southern District of Florida.**

Only if the Court has found that the balance of the private interests is equal or near equal, should it then balance the public interests in transferring the case to Haiti. See e.g. Lugones v. Sandals Resorts, Inc., 875 F. Supp. 821, 825 (S.D. Fla. 1994). Here, the United States has a compelling interest in vindicating Dorélien's violations of international human rights law. See Wiwa v. Royal Dutch Petroleum Co., 226 F.3d 88, 106 (2d Cir. 2000) ("The new formulations of the *Torture Victim Protection Act* convey the message that torture committed under color of law of a foreign nation in violation of international law is 'our business', as such conduct not only violates the standards of international law but also as a consequence violates our domestic law.") Indeed, the *Torture Victim Protection Act* "expresses a policy favoring receptivity by our courts to such suits" (226 F.3d at 105); and suits brought pursuant to the *Torture Victim Protection Act* "should not be facilely dismissed on the assumption that the ostensibly foreign controversy is not our business." Id., at 106.¹¹ See also, Presbyterian Church of Sudan, 244 F. Supp. 2d at 339-340 (discussing U.S. interest in vindicating international human rights violations and citing Wiwa).

To dismiss this case for *forum non conveniens*, and thereby allow Dorélien to escape being held accountable for his crimes and get away with over \$ 1million in Florida Lottery

v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980), which launched the modern application of the *Alien Tort Claims Act* to human rights cases like this one, the defendant, like Dorélien, was served while in I.N.S. custody and on the eve of deportation. Dorélien's argument, that his deportation compels dismissal, would lead to the perverse result that persons deported for the most heinous and easily proven human rights violations would be immune from suit here. In this case, the government arrested and deported Dorélien because of his crimes in Haiti – he was arrested by a special task force of Immigration and Customs Enforcement that targets human rights abusers. For this Court to abstain jurisdiction in this case, just because the government was able to deport Dorélien, would reward Dorélien for his crimes.

¹¹ The Wiwa court reversed a *forum non conveniens* dismissal to Britain in part because the trial court had "failed to give weight" to "the interests of the United States in furnishing a forum to litigate claims of violations of international standards of the law of human rights." Wiwa, 226 F.3d at 106. Wiwa is instructive because it refused to send a case to Britain, where the courts are regarded as "exemplary in their fairness and commitment to the rule of law" Id. at 101. Sending this case to Haiti, where Dorélien's accomplices in the Raboteau Massacre have overthrown the government and now exercise great power, should be unthinkable.

money, would defeat the public policy of the United States expressed in the *Torture Victim Protection Act*, and would be an affront to justice.

(d) The plaintiffs could not reinstate their suit without undue inconvenience or prejudice.

If, after balancing the above-stated factors, the Court determines that Haiti is an available and adequate forum, it should then determine whether Plaintiffs can reinstate their claims there without undue inconvenience or prejudice. La Seguridad, 707 F.2d at 1307. Here, Plaintiffs would not be able to reinstate their suit without undue inconvenience and prejudice because, if this case is dismissed, Dorélien will promptly complete the transfer of his lottery prize beyond the reach of this Court, and the courts of Haiti as well. The prejudice to Plaintiffs would be total: their ability to collect would be thwarted. More significantly, Plaintiffs would likely be the victims of violence, or even killed, should they assert their claims in Haiti. Haiti simply is not a viable alternative forum, and this case should not be dismissed for *forum non conveniens*.

III. CONCLUSION

Accepting, Dorélien's own characterization of his Motion to Dismiss Improper Venue (D.E. 53), as a Rule 13(b)(3) defensive motion, it is barred as untimely by Rules 12(b) and 12(g), Federal Rules of Civil Procedure. If characterized as a motion to dismiss for *forum non conveniens*, it is untimely, and also fails on the merits. Dorélien filed his motion now for one reason: he knows that he will never be called to account for his crimes in Haiti. In February, his accomplices in the Raboteau Massacre overthrew the government of Haiti, and Dorélien promptly walked out of prison, without legal process. A week ago, the Haitian judge who presided over Dorélien's trial was beaten by thugs; and now Plaintiffs are in grave danger. In these circumstances, Defendant Carl Dorélien's Motion to Dismiss Improper Venue (D.E. 53) should be denied – that is the only just thing to do.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Plaintiffs' Response in Opposition to Defendant Carl Dorélien's Motion to Dismiss Improper Venue (D.E. 53), was served by U.S. Mail this 14th day of April, 2004 to: Kurt R. Klaus, Esq., Law Offices of Kurt R. Klaus, Jr., 3191 Coral Way, Suite 402-A, Miami, FL 33145, attorney for Defendant Carl Dorélien; Scott M. Behren, Esq., , attorney for Defendant Lump Sum Capital, LLC.



Dwayne E. Williams

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case No. 03-20161 CIV-KING

MARIE JEANNE JEAN, in her individual
capacity, and as parent and legal
guardian for minors VLADIMY PIERRE
and MICHELDA PIERRE, and
LEXIUSTE CAJUSTE,

Plaintiffs,

v.

CARL DORÉLIEN,
and LUMP SUM CAPITAL, LLC
a Maryland limited liability company,

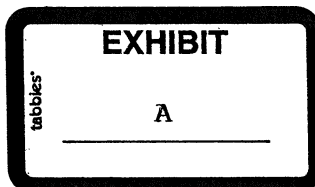
Defendants.

DECLARATION OF BRIAN CONCANNON, JR.

I, Brian Concannon, Jr., declare as follows:

1. I am a member of the Massachusetts Bar. I have worked in Haiti since 1995, first with the United Nations/Organization of American States Civilian Mission to Haiti (MICIVIH). I now co-direct the Bureau des Avocats Internationaux (BAI), which was established by the Haitian government to help victims and to assist in the prosecution of human rights cases, mostly resulting from the military dictatorship that ruled the country from 1991 to 1994. I have also been retained as an expert witness in this case and have submitted a report outlining my anticipated testimony.

2. I spend a significant amount of time each year living in Haiti and even when I am in the United States, I stay in very close touch with my contacts in Haiti and



monitor events going on there. Therefore I am very well acquainted with the present situation in Haiti.

3. Many of the victims of the "Raboteau Massacre," including Marie Jeanne Jean, a plaintiff in this case, are in grave danger. The recent violent rebellion that began in January was launched in the city of Gonaïves. Raboteau, where the 1994 massacre occurred, is a slum area of Gonaïves. The residents of Raboteau have been and continue to be in danger as a result of the rebellion.

4. Many of the people responsible for carrying out or overseeing the Raboteau Massacre have now been freed from jail without legal process, and now live comfortably and openly in Haiti. One of them is the defendant in this case, Carl Dorélien. In addition to Dorélien, other members of the High Command of the Armed Forces that ruled Haiti from 1991 to 1994 were also freed, including Jean-Claude Duperval and Hébert Valmond. All three had been convicted in 2000 for their responsibility in the Raboteau Massacre. They had also been deported from the United States for being human rights abusers.

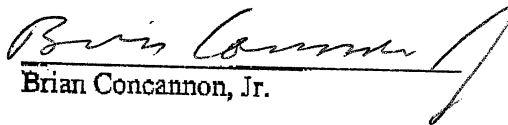
5. In the same trial in which Dorélien, Duperval and Valmond were convicted, two top leaders of the current rebellion, Louis Jodel Chamblain and Jean Pierre, also known as Jean Tatoune, were also found guilty of murder for their roles in the Raboteau Massacre. These men now hold great power in Haiti and are responsible for the murder and intimidation of many people, including residents of Gonaïves. All the victims of the Raboteau Massacre, who were brave enough to bring charges or testify against these men in 2000, are now in danger of retaliation at the hands of people loyal to Chamblain and Tatoune.

6. This threat is not merely theoretical. The Raboteau trial judge, who presided over the trial of Dorélien, Chamblain, Tatoune and the others was recently attacked and beaten up by armed men. This incident occurred just over one week ago. In January forces opposed to the government of President Jean-Bertrand Aristide set fire to the house of the chief prosecutor in the Raboteau case.

7. Although the persons convicted in the Raboteau case were ordered to pay compensation to the victims, including Marie Jeanne Jean, none of the victims could now assert their claims without being at grave risk. It is completely unsafe and impossible, due to the current ineptitude of the Haitian judicial system, for the victims to collect the money the defendants were ordered to pay them. The defendants who were convicted *in absentia*, like Dorélien, have the right to ask for a new trial. If any defendant sought a new trial, the victims would be in too much danger to bring claims or testify against him.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this ^{12th} ~~11th~~ day of April, 2004, in Marshfield, Massachusetts.


 Brian Concannon, Jr.

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Posted on Thu, Mar. 04, 2004

JIM DEFEDE/COMMENTARY

Rights abusers going free from Haitian prisons

For the past eight years, Brian Concannon has led an office in Haiti known as *Bureau des Avocats Internationaux*, created by the Haitian government in 1995 to help the victims of human rights abuses during Haiti's dictatorships.

The BAI worked with government prosecutors to gather evidence in some of the country's most notorious killings, including the so-called Raboteau Massacre, in which at least eight people, and possibly as many as 25, were killed. Some of the bodies were dragged off by dogs and never found. Scores more were shot and wounded.

The April 1994 attack in Raboteau, a slum in the northern city of Gonaives, was carried out by soldiers and members of FRAPH, the paramilitary arm of the dictators who toppled President Jean-Bertrand Aristide in 1991.

When Aristide returned to power in October 1994, Haitian prosecutors began investigating the Raboteau case and others. In 2000, 16 former soldiers and FRAPH members stood trial in a six-week court case broadcast live throughout the country. Twelve defendants were found guilty. Another 37 were convicted in absentia because they had fled Haiti.

The Raboteau trial was a landmark event. But now Concannon watches in disbelief as all of the convicted men are now free, released from prison in recent days by rebels.

Indeed, one of the rebels who marched victoriously into Port-au-Prince on Monday was Louis Jodel Chamblain, a FRAPH leader who was among those convicted in absentia for the Raboteau Massacre.

"It's a tragedy," Concannon told me during a phone interview from Oregon. "The people who should be in jail for crimes against democracy are running the country right now, killing democracy's supporters, terrorizing the population and trampling the Constitution."

Concannon spends 80 percent of his time in Haiti. Now he doesn't know when he'll return. "It's extremely frustrating, personally, to see eight years of work go down the drain," he said. "But the worst is my fears for my colleagues who took a much greater risk than I did."

Concannon is afraid many of the people who worked with him gathering evidence and providing testimony will be targeted for reprisals.

"We've already started seeing it," he says.

Last year, rebels raided the prison in Gonaives freeing Jean Tatoune, a FRAPH leader who directed

EXHIBIT

the carnage in Raboteau. "When Jean Tatoune got out he started terrorizing people in Raboteau who testified against him," Concannon said. "Several people that I know had their houses burned down. In January the chief prosecutor in the Raboteau case had his house burned down."

Other members of the Raboteau case freed from the National Penitentiary this week: Jean-Claude Duperval, Carl Dorélien and Hebert Valmond. All three were members of the military high command during the military's control of Haiti from 1991 to 1994. Duperval was the Assistant Commander-in-Chief, Dorelien was in charge of personnel, and Valmond was the head of intelligence. All three were deported from the United States to Haiti in the last year to begin serving their life prison terms.

According to the Orlando Sentinel, Duperval called relatives in Central Florida after he was freed, saying his prayers were answered.

The Associated Press reported all 3,000 people held in the National Penitentiary were freed on Sunday. Among them, according to Concannon, was Jackson Joanis, accused of participating in numerous beatings and killings between 1991 and 1994. Convicted in the 1993 assassination of businessman Antoine Izmary, he has also been charged in the murder of Fr. Jean-Marie Vincent. After Aristide was restored to power in October 1994, Joanis fled to Florida where he worked as a cab driver in Broward. He was deported back to Haiti in 2002.

"Now he's free with the others," Concannon said. "It's like going back in time."

Perhaps one of the more notorious figures in Haiti's history released from prison this week was former Haitian Gen. Prosper Avril, who seized power in a coup back in 1988.

Concannon noted that a U.S. District Court found that Avril's regime engaged in "a systematic pattern of egregious human rights abuses," and found him personally responsible for enough "torture, and cruel, inhuman or degrading treatment" to award six of his victims \$41 million in compensation.

He was in prison awaiting trial on charges stemming from the 1990 slaughter of 11 civilians in Piatre.

Avril's son, Gregor, confirmed that his father was set free earlier this week. "We didn't have much hope he would ever be free," Gregor said in a phone interview from Port-au-Prince. "I guess this [Aristide being forced from power] is what needed to happen for him to get out of prison."

What plans does the former general have now that he is free?

"I don't think he has any particular plans," Gregor said. "He plans to reconnect with his family and move on with his life."

AbuserswalkFree-Dorelien.txt

3/15/04 MIAMIHD 11

3/15/04 Miami Herald 11

2004 WL 73124181

(Publication page references are not available for this document.)

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Monday, March 15, 2004

A

Abusers back in the streets; Some of Haiti's most notorious human rights abusers walk the streets openly now.

BY TRENTON DANIEL AND SUSANNAH A. NESMITH
tdaniel@herald.com

GONAIVES, Haiti The notorious Jean Tatoune is wanted for the massacre of at least six people here, but he's not hard to find. Just ask around Gonaives' seaside slum of Raboteau.

Though Tatoune was sentenced to life for the 1994 killings, he walks the streets openly, a commander of the rebels who helped drive President Jean-Bertrand Aristide from power.

"We're the ones making history," said Tatoune, whose real name is Jean Pierre Batiste, standing on the dusty streets of the slum, surrounded by admirers and children.

Tatoune is only one of several hundred convicted and suspected criminals -- from common murderers to former dictators to army human rights abusers deported from Miami -- who escaped from prisons in the last months of Aristide's rule. Most fled Feb. 5-29, as the rebels opened the prisons and police fled.

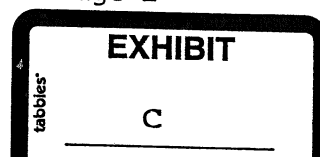
As Haitian police and peacekeeping troops from the United States, France, Canada and Chile try to restore security, recapturing the escapees and bringing them to justice will prove problematic, police officials and human rights groups say.

There's former Gen. Prosper Avril, Haiti's 1988-90 military ruler, jailed for a massacre in 1990, now reading novels at his home in Port-au-Prince, according to his son.

FROM FLORIDA

Also free are three former officers in the brutal military dictatorship that ruled Haiti from 1991 to '94, who were found in Florida, deported home and convicted in the same Raboteau massacre as Tatoune:

Page 1



Gen. Jean-Claude Duperval, once second in command in the army, then captain of a tourist boat at Disney world in Orlando.

Col. Hebert Valmond, former chief of military intelligence, later a Tampa security guard and Evangelical preacher.

Col. Carl Dorelien, former army personnel chief, found living in Port St. Lucie after winning \$3.1 million in the Florida Lotto.

Dorelien was rumored to have been spotted eating an omelet at the capital's high-end Montana Hotel just days after Aristide resigned and fled the country on Feb. 29.

The three were among 37 convicted in absentia for the Raboteau massacre in a landmark trial -- the first to bring to justice a large group of former Haitian soldiers and paramilitary supporters for human rights abuses.

Among them also was Louis-Jodel Chamblain, a former paramilitary leader and now a top rebel leader. He fled to the neighboring Dominican Republic to escape the trial and now walks freely about the capital with a pistol in his waistband,

Avril's son, Gregor, told The Herald his father did not escape but was released on the orders of National Penitentiary director Clifford Larose at 7 a.m. on the Feb. 29 -- two hours before the rest of the prisoners escaped.

Gregor claimed a judge had ordered his father freed in 2002, but Aristide had forced Larose to disobey the order. Larose could not be reached for comment.

Tatoune was one of the key leaders of FRAPH, a paramilitary group that supported the 1991-94 military dictatorship and was blamed for killing scores of Aristide supporters.

He was convicted in 2000 for the Raboteau massacre, which human rights groups allege left at least 20 dead, although many of the bodies were never found.

Tatoune's friends broke him out of the Gonaives prison last year, and now that a ragtag bunch of rebels control this port town, where a U.S.-led peacekeeping force has yet to arrive, he is free to walk its streets.

INMATES FLED

He's not the only one. More than 1,000 inmates at the national penitentiary in

the capital fled on Feb. 29 after they heard radio reports of Aristide's fall, setting trash fires in their cells and snapping open the prison's metal gates.

"The gates aren't strong enough to keep more than 10 people from rattling and breaking the locks, and so everybody escaped," Prison Inspector Olmaille Bien-Aime said.

Recapturing all the prisoners is a task far tougher than Haiti's barely functioning police force can begin to handle. Port-au-Prince Police Commissioner Claude Moise Marckinsky keeps a bulletin board in his office with the mug shots of 60 convicted drug dealers and murderers who escaped on Feb. 29.

But with not enough policemen to patrol the capital, he admitted that he had no plans to seek out the wanted men. They will commit new crimes, Marckinsky said, and will then be rearrested.

Recapturing human rights violators like Dorelien and the others would also require ensuring that they receive fair trials, advocacy groups say, because Haitian laws require anyone tried in absentia to be tried again once captured.

Brian Concannon, an American attorney who helped Haitian prosecutors on the Raboteau trial, said justice was unlikely to prevail in the current chaos. "I'm sure that the ones with the guns and money will call the shots."

----- INDEX REFERENCES -----

NEWS SUBJECT: (Crime/Courts (GCRIM); Political/General News (GCAT))

REGION: (Haiti (HAIT); Caribbean Countries (CARIBZ); Developing Economies (DVPCOZ); Latin American Countries (LAMZ))

LANGUAGE: EN

EDITION: F1

OTHER INDEXING: 5news; americas; topnews; news

Word Count: 840

3/15/04 MIAMIHD 11

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4 of 100 DOCUMENTS

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BBC Monitoring Latin America - Political
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April 3, 2004, Saturday

LENGTH: 676 words

HEADLINE: Haiti: Highlights of Metropole radio news 1145 gmt 01 Apr 04

SOURCE: Radio Metropole, Port-au-Prince, in French 1145 gmt 1 Apr 04

BODY:

Figures in brackets indicate length of time of each item

1. Headlines (5 min)
2. The government has nominated a new council to head the Bank of the Republic of **Haiti**, BNRH. According to a note released yesterday afternoon, economist Raymond Magloire will be the chairman of the council. As for economist Philippe Lahens, he is now deputy governor of the Central Bank. Lahens is a former president of the French-Haitian Chamber of Commerce and Industry. Attorney Charles Castel is appointed director general. He was responsible for judicial affairs in the previous administration. Economists Remy Montas and Georges Henry Fils are members of the BNRH Council. It should be recalled that Venel Joseph was the chairman of the previous BNRH council. (1 min)
3. The Haitian National Police seem to be making a lot of progress in the fight against crime. Some individuals who were accused of participating in kidnappings in the metropolitan area have been arrested. Four alleged bandits were caught in the Delmas 75 area while a police patrol was searching vehicles. (3 min)
4. Concerning the security issue, the government has decided to maintain the curfew from 2200 to 0500 until further notice. Justice Minister Bernard Gousse announces a modification in the timeframe of the curfew as of this week if all the conditions are met. There was confusion at this level yesterday because the National Police had announced that the curfew was lifted. (2 min)
5. The situation is generally calm and stable, but as long as a disarmament process is not started, then there will always be extortion in **Haiti**, affirmed General Henry (Benteja), chief of the French troops. He made this statement yesterday during a meeting with the diplomatic French press association. (1 min)
6. A meeting took place yesterday between the insp ctor general of the Haitian National Police, PNH, and the human rights defence organizations. The inspector general wants to establish the foundation of a partnership between the human rights militants to avoid all forms of human rights violations within the PNH. Police Chief Inspector General Fritz Jean said that yesterday's meeting was a first step towards the partnership, and they will soon create a commission that will be responsible for studying human rights issues. (2 min)
7. Most people who participated in this meeting with the PNH express satisfaction with the issues that were discussed. The leader of the Human Rights Ecumenical Centre, Jean-Claude Bajeu, hopes that the police structure will be reorganized. (1 min)
8. Unidentified armed individuals beat up **Judge Napela Saintil** in the Croix-des-Bouquets area last night. According to the Haitian Rights Defence Organization, NCHR, the armed men blamed the **judge** for allegedly having adopted judicial decisions against Louis Jodel Chamblain. NCHR official Yolene Gilles, who visited **Saintil** in the Canape-Vert Hospital, denounces this attack and asks the police to assume their responsibility. (3 min)

EXHIBIT

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9. Ads. (5 min)

10. It is necessary for **Haiti** to wait at least 18 months before elections can take place in the country following the departure of Aristide, affirms UN Special Envoy to **Haiti** Reginald Dumas. He was on a mission to the country last week. He made this statement during a UN meeting yesterday. (2 min)

11. Former Haitian President Jean-Bertrand Aristide has lodged a complaint against X for abduction. (1 min)

12. Venezuelan President Hugo Chavez invites the Latin American countries not to recognize the current Haitian Government. He claims that this government was set up by US troops. (1 min)

13. The National Association of Haitian University Students, ANEUH, asks the judicial authorities to take public actions against some former Lavalas officials, particularly Yvon Neptune. (3 min) (FBIS has processed this item)

14. Former Rebel Leader Guy Philippe is back in Cap-Haitien to try to reassure the former rebels. (2 min)

15. International news, ads. (12 min)

16. News summary, ads. (6 min)

LOAD-DATE: April 3, 2004

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Saturday, January 17, 2004

Haiti: Injuries, radio stations torched in Saint-Marc anti-government protest

Excerpt from report by Haitian Radio Vision 2000 on 16 January

Tension was

high in the town of Saint-Marc, the scene of violence yesterday [15 January] during an anti-government demonstration. Armed members of Lavalas [ruling party] people's organizations [OPs] injured three demonstrators with gunshots. In reaction, opposition supporters set fire to the **house** of Public **Prosecutor** Freneau Cajuste and radio station Pyramide, which belongs to Lavalas partisan Fritson Oreus. Correspondent Sefacile Guiliany reports as follows:

[Guiliany - recording, in Creole] Anti-government demonstrators set fire to at least three homes in Saint-Marc. They **burnt** down the **house** of Public **Prosecutor** Cajuste as well as radio station America, which belongs to the **prosecutor**.

They also set fire to radio station Pyramide belonging to Fritson Oreus and the **house** of Wilfrid Destine, an influential member of the Clean-Up organization [Bale Wouze, a Lavalas OP]. A vehicle belonging to the coordinator of the Saint-Marc Communal Section Administration Council [Casec] was also destroyed by fire.

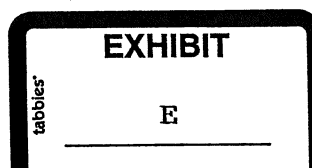
All this violence took place during the second day of protests to demand the departure of President Jean-Bertrand Aristide. Demonstrators marched in different streets of the town carrying branches of trees, signs with slogans hostile to the Lavalas government and the national flag as well as the US flag to show their disapproval of the current government.

Demonstrators affirmed their determination to continue the mobilization until they rid the country of the Lavalas regime. [passage omitted]

It should be pointed out that this is the first time that the population of Saint-Marc has risen up to demand President Aristide's departure without the presence of the police. The demonstrators attempted to open the prison gate but the guards resisted and did not allow that to happen.

When the demonstration reached the main street some Lavalas partisans who were in two vehicles with official number plates opened fire on the demonstrators. Lavalas Senator Jean-Claude Delice was in one of the vehicles. We should point out that the second day of protest by the Assembly of Staunch Militants of the Commune of Saint-Marc [Ramicos] paralysed all activities in the area.

The members of Ramicos have announced that other, similar demonstrations will take place soon. [End of recording]



(Publication page references are not available for this document.)

[Announcer] Last night, two people, one a policeman, were injured by gunfire when guards from the National Penitentiary Administration [Apena] opened fire during a prison breakout. The other victim is a football player with the Violette Athletic Club football team. The escaped prisoners managed to get away. Guiliany reports as follows:

[Guiliany - recording, in Creole] Dieuseul Ulysse, a member of the Coast Guard, was shot in the leg. A member of the Violette Athletic Club football team was shot three times. The incident took place last night when Apena guards shot at a group of prisoners who had escaped from the Saint-Marc prison. The victims were people who happened to be in the area. [passage omitted]

The victims are in stable condition at Saint-Nicolas Hospital, according to doctors. It should be pointed out that earlier today during the demonstration, protesters tried to free the prisoners but without success.

The town of Saint-Marc is now quiet and empty. People are very suspicious because they are not sure how Lavalas partisans will react to these incidents.

Source: Radio Vision 2000, Port-au-Prince, in French 1130 gmt 16 Jan 04

---- INDEX REFERENCES ----

NEWS SUBJECT: (Crime/Courts (GCRIM); Domestic Politics (GPOL); Armed Forces (GDEF); Political/General News (GCAT))

INDUSTRY: (Media (IMED))

REGION: (Haiti (HAIT); Caribbean Countries (CARIBZ); Developing Economies (DVPCOZ); Latin American Countries (LAMZ))

OTHER INDEXING: DOMESTIC_POLITICAL; MEDIA; MILITARY; HTI; EN

Word Count: 577

1/17/04 BBC-AMERICAS (No Page)

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AMNESTY INTERNATIONAL

Media Briefing

AI Index: AMR 36/030/2004 (Public)
News Service No: 085
8 April 2004

Haiti: Armed groups still active Findings of Amnesty International Delegation

At the end of a 15-day mission to Haiti, Amnesty International is deeply concerned for the security of the civilian population. Despite the presence of the Multinational Interim Force (MIF), a large number of armed groups continue to be active throughout the country. These include both rebel forces and militias loyal to former President Aristide.

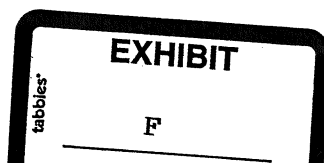
Amnesty International is particularly concerned for the safety of judges, prosecutors, criminal investigators, victims, witnesses and human rights defenders involved in prosecutions relating to past human rights abuses. Judge Napela Saintil, the chief judge in the trial of those responsible for the 1994 Raboteau massacre, was severely beaten on 30 March by an armed man. The judge told Amnesty International delegates that his attacker had threatened him for the part he played in the conviction, *in absentia*, of Louis Jodel Chamblain, one of the participants in the massacre.

The delegation interviewed Haitians from across the political and social spectrum. All expressed a profound sense of insecurity and fear for their own safety from one or the other of the armed groups currently at large.

These include those who participated in the 1991 coup d'état; the Chimères who remain loyal to former President Aristide; unofficial armed pro-Aristide gangs; non-political armed gangs; as well as former military authorities and former rural police chiefs, or *chef de section*, known to have been responsible for serious abuses in the past. Members of the abolished Haitian Armed Forces and former paramilitary leaders convicted of past human rights violations are emerging as new actors in Haiti's political scene and have taken control, especially in areas where state authority is weak or absent.

The interim government has yet to establish control over the country's legal institutions. When visiting the national penitentiary in Port au Prince, the Amnesty International delegates found that part of the prison was controlled by US marines. US officials have since acknowledged they are guarding some of the just under 40 detainees that Amnesty International was informed are being held in the prison. Among them is Jocelerme Privert, the former Minister of the Interior who has just been arrested.

US officials were unable to provide Amnesty International with details about the prisoners or the legal context of their detention. The Haitian prisoners reportedly include persons allegedly involved in drug trafficking and, in one case, terrorism. Amnesty International called on the US authorities to immediately clarify the legal basis justifying their effective detention in US custody and the steps that have been taken to ensure that they have access to full legal safeguards.



Amnesty International welcomes the assurances that it received from Léon Charles, the new Director General of Police, during its mission, that Haiti's new police force will adopt a neutral approach and will show impartiality in its actions. The organization believes that such an approach would be key to restoring confidence in the security forces' respect for the rule of law in Haiti.

Since coming to power, however, the interim government has swiftly moved to arrest members of former President Aristide's Lavalas Family Party suspected of acts of political violence or corruption, while failing to act against a number of known perpetrators of grave human rights violations. Louis Jodel Chamblain and Jean Pierre Baptiste ("Jean Tatoune"), for instance, remain free. As do others who were named in Amnesty International's most recent report, Haiti: perpetrators of past abuses threaten human rights and the re-establishment of the rule of law.

"By only arresting Lavalas supporters the government is sending the wrong message. Known perpetrators of serious human rights violations among the rebel forces must also be taken into custody," Amnesty International said. "The Haitian government must make the defence of human rights a central part of its political agenda. No one should be able to get away with committing human rights violations, including murder, without fear of arrest, prosecution or punishment."

Haiti's recurring political crises are rooted in long-term patterns of human rights violations committed with impunity. Amnesty International strongly believes that the Haitian Government must commit itself publicly and firmly to ending the cycle of impunity by ensuring that perpetrators of serious human rights violations from all factions are brought to justice.

Amnesty International has also received recent reports of killings and kidnappings of persons belonging to pro-Aristide grassroots organizations in poor neighbourhoods of Port-au-Prince. Among those allegedly responsible were several escaped prisoners who had been jailed for rapes and other common crimes. These men have reportedly been working together with the Haitian police and MIF forces to identify people associated with the Lavalas regime.

The driver of a former Lavalas deputy was attacked on 3 April in Martissant and died the next day as a result. On 4 April, another man with Lavalas connections was shot dead outside the market in Martissant. After his killing the assailants went to his house to look for his wife, who is now in hiding, threatened to kill her and burned the house. In addition, two members of KOMIREP, a grassroots organization that included victims of the 1991 coup d'état, were kidnapped, one in Martissant and the other in Cité l'Eternel, in the street on Monday 4 April. Their whereabouts are unknown.

One young woman told Amnesty International delegates that she is receiving threats from a police officer who has recently escaped from prison. He and at least four other men were accused of gang-raping the girl in November 2003. Two of the men were subsequently arrested, including the officer. Both escaped from prison during a mass jailbreak on 29 February. The women's organization and the human rights organization that have been supporting her have also received threats.

The crucial first step towards restoring the rule of law and ending impunity must be a nationwide disarmament that applies to all armed groups. Amnesty International calls on the new government to set up a national disarmament plan to ensure the security of all Haitians.

Amnesty International is dismayed that the Multinational Interim Force has not made a serious attempt to work with the Haitian National Police to establish such a disarmament programme. US Secretary of State Colin Powell and the French authorities, part of the US-led multinational forces, have talked about the need to disarm, but that has not been followed by the determined action that is required.

"The international community must take disarmament seriously now and work closely with the Haitian National Police to that end", Amnesty International said. Security Council resolution 1529 gives them ample scope to do so.

Amnesty International believes that the US-led multinational forces are in a unique and powerful position to contribute to the national disarmament effort before their scheduled departure at the end of May when a United Nations peacekeeping force is scheduled to take over.

Upholding the rule of law and human rights requires not only an effective police force but also a fully functioning judiciary. Rebuilding the judiciary at all levels was one of the key recommendations of the Haiti National Commission for Truth and Justice in 1996.

"Amnesty International calls on the Haitian authorities to draw up a national plan of action to strengthen its rule of law institutions in close consultation with civil society and while building on the pertinent recommendations made in the past by Haitian bodies such as the National Commission."

"Reforming the justice system must be part of a larger plan to reduce poverty, repair Haiti's environment, and build-up its health, sanitation and education systems," the organization said.

Background

As a result of a joint military and paramilitary operation that began on April 1994 in Raboteau, a heavily-populated shanty town along the coast at Gonaïves, an estimated 20 people lost their lives.

Efforts to bring those responsible for the massacre to justice continued for several years. The trial opened in October 2000 and 16 people were convicted of taking part in the massacre. Twelve of these were condemned to life in prison with hard labour; the four others received shorter sentences of between four and ten years.

Thirty-seven defendants, including General Raoul Cédras, head of the military government; Emmanuel Constant, founding leader of the paramilitary organization FRAPH; police chief Michel François; and Cédras' deputy Philippe Biamby were tried *in absentia*. They were all sentenced to life in prison with hard labour, and were fined one billion gourdes, roughly US\$43million. However, they remained at large.

In February 2004, armed government opponents attacked police stations, court houses in Gonaïves, the country's fourth largest town, forcing the police and local authorities to flee. As rebellion spread throughout the centre and north of Haiti, former police and army officers who had left Haiti returned. The rebel forces are led by men like Louis Jodel Chamblain and Jean Pierre Baptiste ('Jean Tatoune'), convicted of carrying out egregious violations under the facto military dictatorship of the early 1990s.

On 29 February, as rebels threatened to advance on Port-au-Prince and forcibly remove Aristide, he left Haiti in disputed circumstances. A Multinational Interim Force composed by mainly US, Canadian and French troops arrived, and was mandated by the UN Security Council to help ensure law and order and protect human rights.

Public Document

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TABLE OF CONTENTS

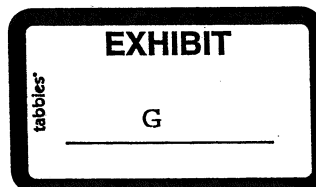
1. Introduction: reappearance of convicted or indicted perpetrators of human rights violations on the scene in Haiti 2
 Urgent action needed now by the international community and its Multinational Interim Force (MIF) 4

2. History repeating itself: the multinational intervention ten years ago, and its links to today 5

3. Post-1994 efforts to hold perpetrators accountable for their crimes 6
 National Commission of Truth and Justice 6
 The Raboteau massacre trial 6
 The trial of those accused of killing Antoine Izméry 7
 The FRAPH documents 8

4. Convicted perpetrators of past human rights violations currently in Haiti 9
 Convicted FRAPH members among the leaders of the rebel forces 9
 Three FADH officers returned to Haiti by the USA following Raboteau convictions, now escaped from the National Penitentiary 11
 Others convicted or indicted on human rights charges who reportedly escaped from prison during the recent unrest 12

5. Recommendations 13



Haiti

Perpetrators of past abuses threaten human rights and the reestablishment of the rule of law

LEADERS OF REBEL FORCES:

Louis Jodel Chamblain - deputy leader of paramilitary group FRAPH convicted in trials of 1994 Raboteau massacre and 1993 extrajudicial execution of Antoine Izméry. Sentenced in both trials to forced labour for life.

Jean Pierre Baptiste ('Jean Tatoune') - FRAPH member convicted in Raboteau massacre trial. Sentenced to forced labour for life.

ESCAPED FROM PRISON DURING CURRENT CRISIS AND OF CONCERN:

Jean-Claude Duperval - deputy commander in chief of the army convicted in Raboteau massacre trial. Sentenced to forced labour for life and returned to Haiti from the USA to serve the sentence.

Hébert Valmond - lieutenant colonel and head of military intelligence convicted in Raboteau massacre trial. Sentenced to forced labour for life and returned to Haiti from the USA to serve the sentence.

Carl Dorelien - Colonel convicted in Raboteau massacre trial. Sentenced to forced labour for life and returned to Haiti from the USA to serve the sentence.

Jackson Joanis - military police captain convicted of the extrajudicial execution of Antoine Izméry, and sentenced to forced labour for life. Returned from the USA to Haiti to serve the sentence. Also indicted in the investigation into the assassination of Father Jean Marie Vincent; case not yet brought to trial.

Castera Cénafils - army captain convicted in Raboteau massacre trial. Sentenced to forced labour for life.

Prosper Avril - General and leader of the 1988 coup d'état, indicted in the investigation into the 1990 Piatre massacre; case not yet brought to trial.

1. Introduction: reappearance of convicted or indicted perpetrators of human rights violations on the scene in Haiti

One of the most significant human rights achievements in the years following the October 1994 return to democratic order in Haiti was the holding of trials in several high-profile cases of egregious past violations. These trials were crucial, not just as a means of ensuring that the truth about past violations emerged, but as tangible evidence, to a Haitian population which had suffered violent repression on a massive scale, of a newly-functioning rule of law and respect for human rights.

The holding of perpetrators from the disbanded Haitian Armed Forces, the *Forces Armées d'Haïti (FADH)*, and the paramilitary *Front Révolutionnaire Armé pour le Progrès d'Haïti (FRAPH)*, Revolutionary Armed Front for the Progress of Haiti¹ to account for their crimes was nearly unprecedented in Haiti's history. The trials of those implicated in such grave violations as the 1994 Raboteau massacre and the 1993 assassination of pro-democracy activist Antoine Izméry gave hope that, for the first time, the cycle of political violence might well and truly be broken.

In a devastating portent for the future of human rights in Haiti, however, a number of those convicted of those crimes are once again free in Haiti, and some have re-emerged as commanders of rebel groups.

In recent weeks, Amnesty International has repeatedly expressed its grave concern about the presence of notorious convicted human rights perpetrators such as Louis Jodel Chamblain and Jean Pierre Baptiste ('Jean Tatoune') as leaders of the rebel forces.

These forces now effectively control much of the country and have been allowed to enter the capital, despite the presence of the Multinational Interim Force. The primary rebel leader Guy Philippe, a former army officer and one-time Haitian National Police commissioner who fled the country in 2000, has reportedly expressed confidence that they will be given a prominent and influential role in public life.

The rebellion began on 5 February, with attacks on the police station and other government buildings by rebels in Gonaïves, department of the Artibonite. It swiftly spread to other areas in the north and centre of the country, and over the next two weeks government authority was forced out of over half of the national territory. Rebels declared their intention to march on the capital Port-au-Prince. Reports of human rights abuses committed by both sides during the attacks have ranged from unlawful killings to arbitrary detentions.

Other perpetrators convicted in the same trials of participating in the same violations as Louis Jodel Chamblain and 'Jean Tatoune' are among the prisoners who escaped from the National Penitentiary in Port-au-Prince on Sunday 29 February, in the

¹ The paramilitary organization was at first known as the *Front révolutionnaire pour l'avancement et le progrès haïtiens*, Revolutionary Front for Haitian Advancement and Progress, later to become the *Front révolutionnaire armé pour le progrès d'Haïti*, Revolutionary Armed Front for the Progress of Haiti.

atmosphere of lawlessness that followed the departure of President Jean Bertrand Aristide from Haiti. Amnesty International fears that the escaped prisoners may well join their former colleagues in the rebel forces, in this way gaining access to weapons and potentially to positions of influence in which they may commit further human rights violations.

Urgent action needed now by the international community and its Multinational Interim Force (MIF)

The UN Security Council, in its resolution 1529 (2004) of 29 February 2004, has mandated the deployment of a Multinational Interim Force (MIF), which began deploying the same day and currently consists of French, Canadian and US troops. The MIF's task includes assisting Haitian security forces "to establish and maintain public safety and law and order and to promote and protect human rights".² Significantly, the resolution also states that "there will be individual accountability and no impunity for violators."³

Given the emergence of growing numbers of charged or convicted human rights perpetrators on the scene, Amnesty International is concerned, in the immediate term, about the **need to protect** the courageous judges, prosecutors and police officers involved in the initial trials from possible reprisal attacks from those they attempted to bring to justice. It calls on the newly-deployed Multinational Interim Force (MIF) to ensure that the safety of all police and justice officials at risk, as well as all witnesses and human rights defenders involved in the cases, is guaranteed. Existing documentation and judicial records pertaining to past abuses must also be protected.

In addition, Amnesty International urgently calls on the international community, through its Multinational Interim Force, to guarantee that notorious human rights offenders with pending sentences for human rights convictions, and those against whom there are outstanding charges, are **taken into custody and brought before the Haitian justice system**. Escapees must be returned to prison; those perpetrators convicted *in absentia* have the opportunity for a retrial, under Haitian law, and should be held in custody until the retrial occurs.

Amnesty International urges the international community, as a matter of priority, to ensure that under no circumstances are those convicted of or implicated in serious human rights abuses given any **position of authority**, whether in a transitional

² Paragraph 2c.

³ Paragraph 7.

government or among the security forces, where they might commit further violations. The international community must not in any way inadvertently legitimise or consolidate convicted perpetrators' hold on power; to do so would be to irreparably undermine any possibility of the rule of law and respect for human rights in Haiti, at the very beginning of an international process publicly committed to those very principles.

Finally, Amnesty International urgently calls on the international community to ensure that **no amnesties for past human rights violations** are included as part of any political settlement with rebel forces.

2. History repeating itself: the multinational intervention ten years ago, and its links to today

Following the 1991 coup that deposed newly-elected President Jean Bertrand Aristide, the Haitian military and its allies, already notorious for widespread human rights violations, maintained control through extreme brutality and widespread human rights violations.

These forces included the *Forces Armées d'Haïti (FADH)*, Haitian Armed Forces, led by General Raoul Cédras as Commander-in-Chief; the *Police Militaire*, military police, headed by Police Chief Michel François; the *attachés*, their civilian auxiliaries; the notorious rural police chiefs, or *chefs de section*, disarmed and placed under civilian authority by Aristide but reinstated after the coup; and, from 1993, a paramilitary organization called *Front Révolutionnaire Armé pour le Progrès d'Haïti (FRAPH)*, Revolutionary Armed Front for the Progress of Haiti, led by Emmanuel "Toto" Constant.

Security forces deliberately and indiscriminately opened fire into crowds, killing hundreds of unarmed civilians.⁴ Many of those suspected of having supported Aristide were beaten, imprisoned, or killed; poor communities and grassroots organizations, where support for him had been strongest, were particularly targeted by the security forces and their paramilitary allies.⁵

⁴ See Amnesty International Annual Report 1992; and Amnesty International, *Haiti: Shattered Hopes: Human rights violations and the coup* (AI Index: AMR 36/03/92), January 1992.

⁵ See Amnesty International, *Haiti: Human rights gagged: attacks on freedom of expression* (AI Index: AMR 36/25/93), October 1993; and Amnesty International, *Haiti: On the Horns of a Dilemma*:

By 1994 hundreds of thousands of Haitians were *en marronage* (in hiding) and tens of thousands of others had attempted to leave the country altogether, most frequently as "boat people" headed in unseaworthy craft for the United States.⁶ Many of these died at sea or were intercepted and returned in breach of international standards. The public pressure created by this situation contributed to the decision, formalized by United Nations (UN) Security Council resolution, to deploy a multinational intervention force in September 1994 which restored Aristide to office one month later. Many of the military and paramilitary leaders responsible for the repression fled Haiti and currently live in exile in the USA and other countries.

3. Post-1994 efforts to hold perpetrators accountable for their crimes

Following the return to constitutional order, efforts were made to deal with the past violations and their repercussions in a number of ways.

National Commission of Truth and Justice

In December 1994, the *Commission nationale de vérité et de justice*, National Commission of Truth and Justice, was established by presidential decree. Officially inaugurated in March 1995, its task was "to globally establish the truth concerning the most serious human rights violations committed between 29 September 1991 and 15 October 1994 inside and outside the country and to help towards the reconciliation of all Haitians, without prejudice to judicial remedies that might arise from such violations."⁷

The Raboteau massacre trial

Raboteau, a heavily-populated shanty town along the coast at Gonaïves, was particularly targeted for repression by the army and paramilitary because of its activist past and the strong support of its inhabitants for ousted president Aristide. As a result of a joint military and paramilitary operation which began on 18 April 1994, an

military repression or foreign invasion? (AI Index: AMR 36/33/94), August 1994.

⁶ See *op cit.*, *On the Horns of a Dilemma*, 1994.

⁷ Unofficial translation from the CNVJ report. French original: "d'établir globalement la vérité sur les plus graves violations des droits de l'homme commises entre le 29 septembre 1991 et le 15 octobre 1994 à l'intérieur et à l'extérieur du pays et d'aider à la réconciliation de tous les Haïtiens, et ce, sans préjudice aux recours judiciaires pouvant naître de telles violations."

estimated 20 people lost their lives. Homes were sacked and burned and men, women and children beaten. Some died from the beatings or from gunshot wounds while others drowned as they fled into the sea. Some bodies were never recovered, as the survivors had to flee the area for their own safety.

Efforts to bring those responsible for the massacre to justice went on for several years. By 1998 at least 22 people were in detention pending the outcome of the investigation into crimes committed in the course of the massacre, including murder, attempted murder, assault, torture, illegal imprisonment, abuse of authority, theft, arson and destruction of property. Arrest warrants were issued for the leaders of the 1991 military coup and other military officers and paramilitary leaders, for their alleged role in masterminding the massacre. Efforts by the authorities to track down those responsible included unsuccessful attempts to extradite several suspects from Honduras, Panama and the USA.

The trial opened in October 2000. More than thirty people attended from Raboteau to bear witness; in addition, five independent international experts testified about the context of repression in which the massacre was carried out, the military structure involved and the forensic evidence available.

On 9 November 2000, 16 people were convicted of taking part in the massacre. Twelve of these were condemned to life in prison with hard labour. The four others received shorter sentences of between four and ten years; all 16 were ordered to pay damages into a fund for the families of victims. Six defendants were acquitted.

Thirty seven defendants including General Raoul Cédras, head of the military government; Emmanuel Constant, founding leader of FRAPH; police chief Michel François; and Cédras' deputy Philippe Biamby were tried *in absentia*. They were all sentenced to life in prison with hard labour, and were fined one billion gourdes, or roughly US\$ 43 million. However, they remained at large.

The trial of those accused of killing Antoine Izméry

Antoine Izméry, a businessman and prominent supporter of President Aristide, who was gunned down on 11 September 1993 in the Church of the Sacred Heart in Port-au-Prince while attending a mass commemorating a massacre that had occurred five years earlier.⁸ The gunmen burst into the church and forced Antoine Izméry to

⁸ For further details, see op. cit., *Haiti: Human Rights Gagged*; Amnesty International, *Haiti: Still Crying Out for Justice*, AI Index: AMR 36/02/98, July 1998; Amnesty International, 'Haiti: Eye-witness account of extrajudicial execution', News Service 146/93, AI Index: AMR 36/WU 03/93, 4

accompany them outside where they made him kneel down before shooting him twice in the head.

On 25 August 1995, Gérard Gustave, known as 'Zimbabwe,' who used to work as an *attaché* with the Haitian army, was sentenced to forced labour for life for the assassination of Antoine Izméry. On 25 September 1995, several other people, believed to number seventeen, were tried in their absence in connection with the same case. Seven were sentenced to forced labour for life. Among them was Louis Jodel Chamblain, deputy leader of the FRAPH, and Jackson Joanis, former military police captain. Most of the accused were believed to be living abroad at the time of the trial, mainly in the neighbouring Dominican Republic.

The FRAPH documents

Emmanuel Constant, leader of FRAPH, is widely alleged, and himself claims, to have been in the pay of, and under the orders of, the US Central Intelligence Agency (CIA) during the coup period. Emmanuel Constant lives openly in the USA. As a result of a damages claim brought against him by Alerte Belance, a Haitian woman living in the USA, for an alleged assault by FRAPH members in 1993, it emerged that the US authorities were in possession of tens of thousands of pages of documents which had been removed from the FRAPH offices by the Multinational Force (MNF)⁹ in October 1994. As a result of subpoenas brought by US lawyers, the US Department of Defence admitted that it was in the process of reviewing the classification status of the documents.

In October 1995 the Haitian Senate sought the assistance of international human rights organisations in their efforts to recover the documents which were considered essential to any prosecutions against FRAPH members as well as to the work of the National Commission of Truth and Justice. In December 1995 a spokesman for the US State Department announced that the documents would be returned once they had been reviewed and the names of all US citizens removed, though he did not rule out that Washington would keep some of the documents.

November 1993; and Amnesty International, Urgent Action 321/93, AI Index: AMR 36/20/93, 13 September 1993.

⁹ A United States-led Multinational Force (MNF) arrived in Haiti on 18 September 1994. Leaders of the coup that had ousted President Jean Bertrand Aristide in September 1991 agreed to relinquish power following the MNF's arrival, and Aristide himself returned to complete his presidential term in October 1994.

In October 1996, some materials were transferred to the USA Embassy in Port-au-Prince but the Haitian Government reportedly refused to accept them on the grounds that they were not intact. In October 2001, Aristide stated publicly that the documents had been returned. However, since their return no further trials from the relevant period have taken place.

4. Convicted perpetrators of past human rights violations currently in Haiti

Amnesty International is deeply concerned at the emergence in Haiti of many of those linked to past human rights violations. These can be broken down into a number of groups.

Convicted FRAPH members among the leaders of the rebel forces

© AP. Louis-Jodel Chamblain, left, and Guy Philippe with rebel fighters on 29 February 2004.

In late 1994, the Haitian authorities issued arrest warrants for the former leader of the notorious paramilitary group FRAPH, Emmanuel Constant, and his deputy, **Louis Jodel Chamblain**, reportedly in connection with a judicial investigation into FRAPH's involvement in human rights violations.¹⁰ Both of them fled abroad.¹¹

Louis Jodel Chamblain was convicted *in absentia* in both the Raboteau and the Antoine Izméry trials, and sentenced in both to forced labour for life.

He apparently remained outside Haiti until, on 14 February 2004, he gave an interview to a Haitian radio station to say that he had joined the armed movement seeking to overthrow President Jean Bertrand Aristide. He was accompanied by former Haitian National Police commissioner Guy Philippe; the two men are now repeatedly referred to as the leaders of the rebel force, and in recent days were at the forefront of the rebel group which arrived in Port-au-Prince following Aristide's departure.

¹⁰ See Amnesty International, *HAITI: A question of justice* (AI Index: AMR 36/01/96), January 1996, p. 6.

¹¹ In March 1995, the Haitian government sought the extradition of Emmanuel Constant from the USA. A US court ordered his deportation to Haiti in August 1995 but he appealed against the ruling. He remains in the USA.

© AP. Amiot Métayer, left, stands with Jean Pierre Baptiste ('Jean Tatoune'), right, in Gonaïves' seaside shantytown of Raboteau, Haiti, on 3 August 2002.

Jean Pierre Baptiste ('Jean Tatoune') is another FRAPH member convicted of participating in the Raboteau massacre. Following his conviction, he was held in the Gonaïves prison.

The 1994 Raboteau massacre was reportedly sparked by an attempt to arrest pro-Aristide activist Amiot "Cubain" Métayer.¹² Métayer went into hiding, but returned to Gonaïves following the return to constitutional order, where he reportedly led an armed gang of Aristide supporters.

On 3 July 2003 he was arrested in Gonaïves, reportedly in connection with the killing of the guard of an opposition party headquarters.¹³ He was transferred to Port-au-Prince, but after days of rioting by his supporters, he was returned to Gonaïves prison, which his supporters attacked several days later. In addition to Métayer, over 150 prisoners were believed to have escaped, including "Jean Tatoune." During later clashes between pro- and anti-government supporters at the end of the year, Métayer and Jean Tatoune led opposing armed gangs, both of which were accused of human rights abuses.

However, the men appeared at times to have patched up their differences and to be working together. After Métayer's body was found on the outskirts of St Marc, department of the Artibonite, on 22 September 2003, with gunshot wounds to the eyes and chest, "Jean Tatoune" emerged as one of the leaders of Métayer's 'Cannibal Army' band. This group called repeatedly for Aristide's ouster, blaming him for Métayer's death, and its members were among the armed attackers who violently took control of Gonaïves on 5 February 2004 to start the armed rebellion against Aristide in Haiti.

Gang members under the direction of "Jean Tatoune" have been accused of numerous abuses against government officials and supporters, as well as other Gonaïves residents, over past months. In one example, Amnesty International has received reports that in December 2003, Armée Cannibale members began threatening Raboteau residents who had been involved in the trial, forcing some of them to flee the area out of fears for their safety.

¹² See Amnesty International Report 1995.

¹³ The killing reported occurred during attacks on supporters of the political opposition following a December 2001 attack by unidentified assailants on the National Palace.

Three FADH officers returned to Haiti by the USA following Raboteau convictions, now escaped from the National Penitentiary

Three former FADH officers returned to Haiti by the USA under the US Immigration and Customs Enforcement bureau's "Operation No Safe Haven," following their conviction in the Raboteau trial, reportedly escaped from the National Penitentiary on 29 February 2004. They include Carl Dorelien, Herbert Valmond and Jean-Claude Duperval.¹⁴

Jean-Claude Duperval was Haiti's Chief of Police in 1990 and 1991, during a time in which police officers were accused of committing extrajudicial executions and other serious violations.¹⁵ From 1992 to 1994 he was deputy commander in chief of the FADH.

According to reports, Duperval was not accused of participating directly in the Raboteau massacre, but rather of knowing about the violations and taking no steps to stop them or punish those involved. He received a sentence of forced labour for life. His statements regarding specific cases of human rights violations by FADH officers were cited in the Truth Commission report to back up its assertion that:

Everything indicates that the military hierarchy was sufficiently informed and that it chose not to punish human rights violations.¹⁶

Duperval was returned to Haiti by US immigration authorities in January 2004, and was being held in the National Penitentiary, from which he is believed to have escaped on 29 February 2004.

Former FADH lieutenant colonel **Hébert Valmond** was reportedly head of military intelligence, and received a sentence of forced labour for life after being convicted of murder, torture, destruction of homes and other crimes during the Raboteau massacre. He reportedly left for the US in 1995 and was taken into custody by US immigration officials in April 2002. He was returned to Haiti in January 2003, and was being held in the National Penitentiary before reportedly escaping on 29 February 2004.

¹⁴ As of mid-January 2004, former FADH colonel Frantz Douby, remained in Krome detention centre in the USA, awaiting deportation following his arrest by US immigration authorities in August 2003. Another officer accused of human rights violations, Luc Asmath, was arrested in September 2001 and subsequently returned to Haiti by US authorities. However, he reportedly was not taken into custody upon arrival. His whereabouts since his arrival in Haiti are unknown.

¹⁵ See, for example, Urgent Action 510/90 (AI Index: AMR 36/10/90), Extrajudicial execution of Jeanine Dérosier, 18 December 1990.

¹⁶ CNVJ report, Chapter 7, "Les structures de la répression," "The structures of repression." Unofficial translation.

Former FADH colonel **Carl Dorelien** was arrested by US immigration authorities in June 2001.¹⁷ In addition to his Raboteau conviction and life sentence, he reportedly faces a civil lawsuit filed in Miami courts seeking compensation for family members of a victim of the Raboteau massacre. He was returned to Haiti in January 2003, and was said to have been detained in the National Penitentiary until the mass prison breakout on 29 February 2004.

Others convicted or indicted on human rights charges who reportedly escaped from prison during the recent unrest

Former military police captain **Jackson Joanis**, head of the Anti-Gang police unit and aide to Port-au-Prince military police chief Michel François, was convicted *in absentia* for the assassination of Antoine Izméry and sentenced to forced labour for life. He was also indicted in the investigation into the 28 August 1994 assassination of reformer and pro-democracy activist Father Jean Marie Vincent; that case has not yet come to trial.

Joaanis had reportedly fled to the USA in 1995, and was detained by immigration officials there in late 2000 on the basis of involvement in past violations. He was returned to Haiti by US authorities on 25 March 2002, and reportedly held in the National Penitentiary until his escape on 29 February 2004.

Captain **Castera Cénafils**, military commander of Gonaïves at the time of the Raboteau massacre, was among those convicted in the Raboteau trial and sentenced to life in prison with hard labour. He was initially held in the Gonaïves prison, but was reportedly transferred to the National Penitentiary in Port-au-Prince after the August 2002 breakout in which Amiot Métayer and "Jean Tatoune" escaped. Cénafils, with a number of other individuals convicted in the Raboteau massacre, had appealed his conviction and sought to have it reversed.

Former FADH general **Prosper Avril** was chief of presidential security under President Jean-Claude Duvalier, until the latter was ousted from power in February 1986. In 1988 he led a coup d'état, and remained in power until March 1990. Under Avril's leadership reports of torture and ill-treatment of political and common-law prisoners were widespread: cases denounced by Amnesty International during crackdowns on political opposition under Avril's leadership included torture and ill-treatment of activists such as Serge Gilles and Evans Paul and unlawful detention and ill-treatment of activist Antoine Izméry.¹⁸

¹⁷ See Amnesty International Annual Report 2002.

¹⁸ See *op. cit.* HAITI: *Shattered hopes*; see also Urgent Actions from the relevant period.

Prosper Avril was arrested in Haiti on 26 May 2001, reportedly under a warrant dating from 1996. The charges against him included assault, torture and illegal arrest of six Haitian activists in 1989 and 1990.¹⁹ In April 2002 an appeal court ordered Prosper Avril's release; he was freed but immediately rearrested, reportedly on charges related to the 1990 Piatre massacre of peasant farmers.²⁰

In December 2003, Avril was officially indicted in the investigating judge's report of his findings. The report charges that Avril, though not present, was complicit in a 12 March 1990 attack by soldiers and armed civilians on peasant farmers, in which eleven farmers were killed and hundreds of houses burned.

5. Recommendations

Amnesty International is deeply concerned by the emergence of growing numbers of convicted and indicted human rights perpetrators on the turbulent scene in Haiti today. Amnesty International calls on the international community, through its Multinational Interim Force, to take immediate steps to counter the threat to human rights and the rule of law posed by these individuals.

- The MIF must take urgent steps to guarantee that notorious human rights offenders with pending sentences for human rights convictions are taken into custody and brought before the Haitian justice system. Escapees must be returned to prison; those perpetrators convicted *in absentia* have the opportunity for a retrial, under Haitian law, and should be held in custody until the retrial occurs.
- The international community must as a matter of priority ensure that under no circumstances are those convicted of or implicated in serious human rights abuses given any position of authority, whether in a transitional government or among the security forces, where they might commit further violations.
- The international community must ensure that no amnesties for human rights violations are included as part of any political settlement with rebel forces, pro-

¹⁹ The six men had already been awarded damages in a civil case brought in 1994, in which a United States district court ruled that Avril bore personal responsibility for their interrogation and torture.

²⁰ There were reportedly some procedural and other irregularities with his detention relating to the Piatre massacre, and at one point an appellate court ordered that he be freed. However, there were questions about the procedural correctness of the court's order, and he was not released. Eventually an investigating magistrate ordered that Avril remain in detention while the Piatre investigation continued.

government militias or security forces. Perpetrators should not be allowed to benefit from any legal measures preventing the emergence of the truth and accountability before the law.

- The Multinational Interim Force (MIF) must take urgent steps to ensure that the safety of police and justice officials, witnesses and human rights defenders involved in the arrest and conviction of the perpetrators of past abuses named in this report is guaranteed.
- The MIF must ensure that police and judicial records pertaining to past abuses must also be protected.
- In the longer term, the international community must assist in strengthening the Haitian justice system, so that all of those accused of involvement in human rights abuses, both under past governments and during the current crisis, can be investigated and brought to justice.
- The MIF must take immediate steps to disband and disarm the rebel groups, and armed pro-government gangs, to minimise the risks of ongoing human rights abuses, and to bring those responsible to justice.