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# EXHIBIT

1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ALERTE BELANCE

Plaintiff

vs.

FRONT POUR L'AVANCEMENT ET  
LE PROGRES HAITIEN (FRAPH),  
an unincorporated  
association,

Defendant

Civil Case No. 94-2619  
(Nickerson, J.)  
(Magistrate Go)

DEPOSITION

of

Emmanuel Constant

Date taken: Wednesday, June 7, 1995

Time: 1:55 p.m.

Place: Wicomico County Detention Center

411 Naylor Mill Road

Salisbury, Maryland 21801

Reporter/Notary: Anne Marie Widdowson

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A-P-P-E-A-R-A-N-C-E-S

Ira J. Kurzban, Esquire

Michael D. Ratner, Esquire

Beth Stephens, Esquire

on behalf of the Plaintiff

Emmanuel Constant, Pro Se

Also Present: Ronald Aubourg, Translator

James D. Hollis

C-O-N-T-E-N-T-S

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1 the group coming, he thought they were being attacked  
2 and he pulled his gun and started shooting at those  
3 people.

4 At this moment, Mr. -- that's when we found  
5 out that the presidential committee had an office  
6 there, and at this moment only the police arrived and  
7 started running after those people.

8 There was no FRAPH members at this moment.  
9 I'm very sorry. Because there was no FRAPH -- I did  
10 not have enough time to get any members whatsoever.

11 Q You were the only FRAPH member there; is  
12 that right?

13 A No, I was not the only FRAPH member. I was  
14 the -- one of the FRAPH leaders. I'm not a member of  
15 FRAPH. I'm a leader of FRAPH.

16 Q In addition to you being the leader of  
17 FRAPH --

18 A Yeah.

19 Q -- you were the only person identified with  
20 FRAPH at the Hotel Christopher on October --

21 A It was -- it was a press conference. It was

# EXHIBIT

2

## HAITI

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### Human Rights Developments

Human rights violations in Haiti mounted in 1994 as the military regime increasingly turned to terror tactics in its effort to eliminate all vestiges of support for elected President Jean-Bertrand Aristide. During the first half of the year, as international efforts to restore democracy foundered, the army joined forces with paramilitary thugs in a marathon of gross human rights violations.

In May, the Clinton administration stepped up pressure on the regime through stiffer international sanctions and threatening the use of force. In September, a last-minute agreement with the regime led to the unopposed occupation of Haiti by a U.S.-led multinational force. Within weeks, the coup leaders had stepped down and President Aristide returned on October 15. The U.S. deployment interrupted the regime's campaign of brutality, although violent incidents continued to occur.

Violations previously less common in Haiti emerged as patterns during the first months of the year. These included forced disappearances, rapes, and grotesque murders, crimes calculated to terrorize the population at large. These acts were increasingly directed against the relatives and neighbors of activists.

The army used armed civilian adjuncts, or attachés, to crush civil society. The army-backed paramilitary group calling itself the Front for the Advancement and Progress of Haiti (FRAPH) continued to be implicated in countless human rights crimes. Composed of well-armed neo-Duvalierists and attachés, FRAPH opened offices around the country and established informer networks in numerous communities, recruiting members through bribery and terror.

On December 27, 1993, FRAPH agents with police protection torched a section of Cité Soleil, a Port-au-Prince shantytown, killing at least thirty-six, and leaving thousands homeless. The massacre became the blueprint for systematic attacks on poor neighborhoods that, though indiscriminate in their choice of victims, comprised a broader strategy to neutralize opposition to the regime.

On April 23, the army and FRAPH massacred at least fifteen residents of Raboteau, a poor neighborhood of Gonaives that had already suffered numerous army incursions. Hundreds of residents fled the area in the aftermath of the massacre. Similar attacks in the vicinity of Le Borgne were reported, although the army prevented journalists and human rights activists from entering the besieged area. While the army typically justified these operations with the pretext that it was looking for weapons or routing suspected guerrillas, there was no evidence that the scores of victims of these assaults were guerrillas or were armed.

The United Nations/Organization of American States International Civilian Mission investigated over two hundred reports of extrajudicial executions from February to July, adding to the estimated

death toll of 3,000-4,000 people since the September 1991 coup d'etat. More than fifty-three cases of forced disappearances were also reported. In most of these cases the victims never reappeared or were found dead, while victims found alive reported that they had been held at clandestine detention sites and tortured.

Rape became a frequent tool used with impunity by state agents to repress women activists and women relatives of activists. The U.N./OAS Mission documented sixty-six cases of politically motivated rape in the first half of 1994; other cases were documented by Human Rights Watch, the National Coalition for Haitian Refugees, and the Inter-American Commission on Human Rights. Victims fearing retaliation by their army-backed assailants, effectively were prevented from reporting the attacks, seeking medical attention, or obtaining legal redress.

The army and FRAPH conducted innumerable warrantless arrests of suspected activists whom they routinely tortured, and usually released only after extorting large sums of money from their families. Other detainees were imprisoned for indefinite periods, without charges, trial, or sentence. In Les Cayes, U.S. soldiers occupying the army barracks found approximately forty emaciated prisoners, some bearing marks of torture; one later died.

In May, the army installed former Supreme Court Justice Emile Jonaissant as de facto president, albeit unrecognized by the international community. In August, he declared a state of emergency which redundantly accorded sweeping powers to the military. Throughout the year basic freedoms were suppressed: journalists continued to be threatened and harassed, meetings were banned, and all expressions of opposition quelled.

An estimated 300,000 Haitians were forced into hiding under the coup regime. Soldiers and paramilitary agents frequently attacked the families of activists already in hiding. As one appalling indication of this practice, forty human rights violations against children were documented by the U.N./O.A.S. Mission during the first half of the year.

Thousands of Haitians continued to flee by sea. In May, de facto President Jonaissant ordered the army to deter boat departures, invoking an arguably illegal 1980 decree that prohibited "clandestine voyages." During the following months, hundreds of Haitians preparing to depart by sea were violently assaulted and arrested by the Haitian army.

The army rampage against Haitian civil society was halted by the U.S. intervention. Human rights violations continued, however, in the form of bloody attacks on exultant pro-Aristide demonstrators. Dozens of people were murdered by the Haitian army and FRAPH around the country during the first weeks of the occupation.

### The Right To Monitor

To their credit, Haitian human rights monitors continued to document and report human rights violations, often at great personal risk. The murder of a prominent priest, and death threats received by members of the Haitian Human Rights Platform, signaled a recrudescence in repression that forced many of them into hiding in August.

The U.N./OAS International Civilian Mission returned to Haiti on January 31 for the first time since

its 200-strong observer staff was evacuated in October 1993. Seventy mission observers in Port-au-Prince conducted thorough investigations of reported violations. Disappointingly, the United Nations failed to renew the mission's expired mandate, leaving it vulnerable to the whims of the army regime. In March, mission observers visiting Hinche were harassed and chased out of town by well-armed FRAPH members with army cooperation. On July 11, Jonaissant ordered the mission to leave the country, which it did on July 13.

The Inter-American Commission on Human Rights made two trips to Haiti during the year. During its second visit in October, the commission urged the Haitian government to investigate past violations and hold the perpetrators accountable.

### The Role of the

### International Community

The Clinton administration made a sharp reversal in Haiti policy midway through the year, transforming its failed approach of accommodating the military regime into a face-off that resulted in the September intervention. Throughout the year, however, the administration was consistent in failing to promote accountability for human rights violations or to insist on safeguards to prevent their recurrence.

During the first half of 1994, U.S. officials actively promoted a blanket amnesty for human rights violations committed since the coup, in addition to the amnesty for crimes associated with the coup itself already decreed by President Aristide. Even after the U.S.-led occupation of Haiti, the administration consistently failed to oppose a broad amnesty that would deny victims of human rights crimes their internationally guaranteed right to a legal remedy.

Until April, the administration responded to the army's failure to comply with the July 1993 Governors Island accord by pressing President Aristide to accept a power-sharing arrangement with elements of the military regime. During the first months of the year, U.S. Special Envoy Lawrence Pezzullo and U.N. Envoy Dante Caputo backed initiatives which required additional concessions by President Aristide without insisting that the coup leaders comply with their previous commitments.

Consistent with its pursuit of a power-sharing arrangement, the administration downplayed human rights abuses committed by the Haitian armed forces and its supporters, choosing not to condemn publicly serious abuses or to attribute responsibility for them to the military regime. The Haiti entry of the Department of State Country Reports on Human Rights Practices for 1993, released in February 1994, was characterized by serious omissions and errors of content and analysis. But by far the most damning manifestation was an April 12 confidential U.S. Embassy cablegram, signed by Ambassador William Swing, that was leaked to the press in early May. While admitting that violence was high, the embassy's cablegram exhibited more concern that Aristide supporters were using the human rights situation to their political advantage than for the victims of violations: "The Haitian Left manipulates and fabricates human rights abuses as a propaganda tool, wittingly or unwittingly assisted in this effort by human rights NGOs and by the ICM [U.N./OAS International Civilian Mission]." The cablegram provoked an international furor and deepened the schism between the embassy and Haitian and international human rights monitors that would prove difficult to bridge.

During the first half of the year, U.S. Coast Guard cutters continued to interdict and forcibly repatriate Haitians fleeing by sea, according them no prior hearing to determine their eligibility for recognition as refugees. Scores of these repatriates were detained by the Haitian army upon return. In at least two cases, a repatriated Haitian was assaulted in the presence of U.S. officials.

Asylum-seekers were referred to the U.S. Embassy's in-country processing program, which remained chronically unfair in processing claims. With an inexcusable lack of foresight, the U.S. allowed 2,000 approved refugees to become stranded for months in Haiti after the June suspension of commercial flights. In June, an approved refugee in hiding was kidnapped and left for dead by paramilitary attachés.

Clinton reversed his policy of forced repatriation in early May. In June, thousands of fleeing Haitians quickly overwhelmed an ill-conceived shipboard screening program. On July 6, all interdicted Haitians were interred at the U.S. naval base at Guantánamo Bay, Cuba, where they were offered a choice between voluntary repatriation or indefinite detention. While the new policy effectively ended the illegal practice of summary repatriation, it did little to uphold the right of Haitians to seek asylum. By late October, all but 6,000 of a total population of 20,000 detained since July had repatriated.

In April, with international efforts to restore democracy stymied and outrage over U.S. refugee policy and serious human rights violations mounting domestically, President Clinton overhauled his Haiti policy. Special Envoy Lawrence Pezzullo resigned in late April, and was replaced by a former congressman, United Negro College Fund president William Gray, III.

The U.S. also successfully sought a U.N. resolution upgrading the oil and arms embargo to a full-fledged trade embargo with stronger enforcement mechanisms. The lists of Haitian military and civilian coup supporters targeted for the freezing of assets and visa denials was expanded and adopted universally under the U.N. resolution.

On July 31, the U.N. Security Council passed Resolution 940, which invoked Chapter VII of the U.N. Charter and allowed the U.S. to form a multinational force "to use all necessary means to facilitate the departure from Haiti of the military leadership." The defiant Haitian military responded by levying charges of treason against President Aristide, while Lt. General Cédras made a show of training civilian militias who would attack the invading troops.

On September 13, the State Department rectified its past indifference by issuing a strong condemnation of human rights abuses in Haiti. Two days later, President Clinton addressed the nation with an emotional description of the regime's brutality as a principal rationale for invading Haiti. Of course, after months of misleading the U.S. public on human rights and tolerating unfounded CIA attacks on Aristide's fitness for the presidency, Clinton had difficulties convincing a skeptical Congress and public that restoring Aristide to Haiti merited risking the lives of U.S. soldiers.

In a last-ditch effort to avoid an unpopular hostile intervention, President Clinton authorized former President Jimmy Carter, Senator Sam Nunn, and General (Retired) Colin Powell to negotiate with the Haitian army's high command. On September 18, with war planes en route to Haiti, the Carter delegation produced an accord, signed by de facto president Emile Jonaissant, under which the top

three coup leaders would step down by October 15, the Parliament would pass a general amnesty, and international sanctions would be lifted. U.N. Special Envoy Caputo resigned in protest over the lack of consultation during the last-minute negotiations.

The Carter agreement allowed U.S. army soldiers and marines to enter the "semi-permissive environment" of Haiti on September 19 without firing a single shot. The U.S. troops were then joined by personnel from other countries, constituting a 16,000 strong multinational force. The mission of the U.S.-led force was to create a "secure environment" which would enable the U.S. to turn the operation over to a U.N. peacekeeping force in early 1995.

While the Carter agreement provided for a bloodless entry into Haiti, U.S. forces were left in the position of working in cooperation with the Haitian army. On September 20, American soldiers watched Haitian police beat two men to death, prompting a reevaluation of the rules of engagement that enabled the troops to intervene to protect Haitian lives. On September 24, an altercation between U.S. soldiers and Haitian policemen in Cap Haitien left ten Haitian police dead and a U.S. army interpreter slightly wounded. Thereafter, a significant portion of the Haitian military, including police, simply deserted to avoid contending with the American troops and an accusing population.

Reluctant to become entangled in internal matters such as law enforcement, the Clinton administration unwisely looked to the Haitian army as the only institution capable of maintaining order pending the creation of a new civilian police force. Alarming, in spite of months of preparation, the U.S. plan did not include adequate mechanisms for the meticulous screening of the army to purge it of human rights violators.

An all-military Haitian commission was charged with selecting 3,000 police recruits from its own ranks for an interim force. The army lists were then reviewed by the U.S. Embassy with information it had compiled on known human rights violators. This cursory screening process lacked essential investigative capability, transparency, and Haitian civilian involvement. Those selected received a six-day course from U.S. police trainers, were issued sidearms, and were redeployed under the same army command structure. These soldiers were expected either to qualify for admission into the new police academy or be retained as part of a smaller, reformed army. About 1,000 former refugees from Guantánamo also recruited for the interim force were likely to be unarmed and assigned to administrative duties.

While disarmament would be essential to ending the violence in the short and long term, the U.S. had no plans for the systematic recovery of weapons held by paramilitary groups. Although U.S. officials reported in November that 14,000 weapons had been recovered, many thousands remained in the hands of soldiers, attachés and FRAPH members still at large. The concentration of international troops in major cities and towns, moreover, had left vast rural areas unprotected.

Press reports in October presented credible evidence of Central Intelligence Agency funding of notorious FRAPH leader Emmanuel Constant, which continued until early 1994. After the intervention, the U.S. maintained close contact with Constant, raising concerns about the U.S. commitment to dismantling the most vicious of the paramilitary groups.

Aristide supporters occasionally turned to violence in efforts to seek retribution for the abuses they had suffered at the hands of state agents. More often, however, they detained and disarmed alleged

abusers and turned them over to the multi-national forces. The latter usually released them, to the frustration of their accusers. Clearly, one central requirement was U.S. support for lawful mechanisms to provide justice for serious crimes in part to prevent the recurrence of such crimes in the future and in part to prevent the spread of popular retaliatory violence.

On October 15, President Aristide returned to Haiti and was welcomed by jubilant crowds. After naming a new prime minister and government, he faced the enormous tasks of repairing the ravaged national economy, establishing a permanent, civilian police force answerable to civilian authority, and rehabilitating a crippled judiciary. He was also responsible for establishing a climate favorable to holding parliamentary and local government elections, tentatively scheduled for early in 1995. Most importantly, with financial and technical assistance of the international community, he would have to break the cycle of violence that has plagued Haiti for decades by assuring accountability for thousands of crimes committed under the coup regime.

The Work of

Human Rights Watch/Americas

Human Rights Watch/Americas continued to work closely with the National Coalition for Haitian Refugees (NCHR) to press the Clinton administration to make accountability for human rights violations a centerpiece of its efforts to restore democracy to Haiti. A principal goal of our work was to articulate why the U.S. should not promote a broad amnesty excusing human rights crimes. A week after the U.S. intervention, a Human Rights Watch and NCHR delegation arrived in Haiti to raise the profile of accountability issues. Our concern about the amnesty then under consideration by the Haitian parliament was consistent with the views of broad sectors of Haitian society, and was reflected in the limited scope of the amnesty eventually passed.

We also advocated for the establishment of a truth commission, not as a substitute for legal justice, but as a mechanism to investigate past abuses and encourage national debate about the appropriate ways to establish justice and foster reconciliation.

We continued to insist on an end to the U.S. policy of forcibly repatriating Haitians fleeing by sea without a refugee status determination. The halting of summary repatriations in June was a partial victory, yet we continued to assert that the camp established at Guantánamo Bay should be only a temporary measure, and that no Haitian should be returned involuntarily without a full and fair hearing of his or her asylum claim.

We published three reports during the year based on a February mission to Haiti, and the ongoing research of Human Rights Watch's Americas division and Women's Rights Project, and the NCHR. Each of these reports documented the mounting repression and devastation of Haitian society during the first half of the year: *Terror Prevails in Haiti: Human Rights Violations and Failed Diplomacy* (Human Rights Watch and the NCHR, April 1994); *Rape in Haiti: A Weapon of Terror* (Human Rights Watch and the NCHR, July 1994); and *Fugitives from Injustice: The Crisis of Internal Displacement in Haiti* (Human Rights Watch, the NCHR and Jesuit Refugee Service/USA, August 1994).

Jean Claude Jean, the Secretary-General of the Haitian Human Rights Platform, a consortium of nine

human rights groups, was invited to participate in Human Rights Watch's annual event honoring selected human rights monitors from around the world.

Throughout the year, we urged the administration to incorporate effective mechanisms for meticulous human rights screening of recruits for the interim and permanent police forces. A mission in late October focused on the issue of police and the dismantling of paramilitary structures of repression, both essential to the credibility of elections due to be held in early 1995, and to the success of Haiti's efforts to build a democracy from the ashes of a dictatorship.



# EXHIBIT

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**HUMAN RIGHTS WATCH/AMERICAS**  
**(formerly Americas Watch)**  
**NATIONAL COALITION FOR HAITIAN REFUGEES**

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April 1994

Vol. 6, No. 5

**TERROR PREVAILS IN HAITI**  
**Human Rights Violations and Failed Diplomacy**

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## I. INTRODUCTION

President Clinton's policy of disregarding fundamental human rights issues to resolve Haiti's political crisis, combined with his inhumane and illegal practice of summarily returning Haitian refugees, has contributed to a human rights disaster that has tarnished his presidency and discredited its stated commitment to democracy and human rights around the world. Constant concessions to the Haitian military by the President's Special Envoy, Ambassador Lawrence Pezzullo, and the refusal to support President Aristide's position that members of the army must be held accountable for human rights abuses, have resulted in the current political stalemate; more importantly, they have strengthened the army's hold on Haiti and prolonged its reign of terror.

By late March, this Haiti policy had come under increasing public criticism from human rights groups, Members of Congress, and the American civil rights community. To appease critics, the executive branch began to tinker with the details of the Governors Island Accord, still failing to address the underlying flaw in the Accord: the absence of any human rights guarantees.

The human rights issue at the core of Haiti's crisis is the army's responsibility for continuing widespread abuses against the Haitian people and its demand for impunity for those violations. To its shame, the Clinton administration supports a broad amnesty that would ensure that the thousands of murders committed since the September 1991 coup will go unpunished. Passage of an amnesty law is one of the three priorities in the Administration's latest proposal to implement the Governors Island Accord. Further, the administration suggests that only General Raoul Cédras will resign his post, leaving the rest of the killers on duty in the armed forces of a "democratic" Haiti. While it is clear that the Haitian judicial system is currently incapable of adjudicating the many cases of serious human rights violations since the coup, it is essential that the right of victims to seek justice in the future be preserved. More immediately, any settlement should ensure that abusive members of the security forces are dismissed to prevent them from using their official capacity to further abuse Haitians.

The Clinton administration's opposition to efforts to hold senior military officials accountable for the killing has had an insidious effect on the political negotiations. For over two years, since the Washington Accord of February 1992, President Aristide has insisted on immediately dismissing these killers from the army and preserving the option of later prosecution. International law fully supports his position. Nonetheless, the administration has failed to support a purge of the murderers in the Haitian army or to oppose a blanket amnesty for these killers, thus supporting the army high command's demand for impunity. Long ago the administration should have made clear that this option is not on the negotiating table. Instead, it has embraced a murderous armed force as a counterweight to a populist president it distrusts. This inexcusable compromise has encouraged the army to sit back and wait while the administration itself presses Aristide to abandon the principle of accountability which international law, and the long-term best interests of Haiti, compel him to uphold.

For its part, the Haitian army has long expressed fear of President Aristide's capacity to inspire mob violence. This concern has only magnified as severe repression and the bite of economic sanctions breed a heightened desire for revenge. In these circumstances, some form of accountability is arguably even in the army's interest, since Haitians will be less likely to impose "justice" in the streets if they can foresee the prospect of justice being done in a court of law.

The small team of UN/OAS International Civilian Mission observers who have returned to Port-au-Prince have documented an escalating number of murders, disappearances, politically-motivated rapes, and arbitrary arrests during the first months of 1994. Residents of Port-au-Prince's Cité Soleil, who are perceived by the military and its backers as Aristide supporters, have been particularly targeted by the heightened violence, especially since the December 27, 1993 massacre there. The administration's failure to support accountability for abusive individuals has no doubt convinced the army and its supporters that they can, in fact, get away with murder.

The Clinton administration has continued to forcibly repatriate Haitian refugees with no prior screening for asylum seekers, in violation of international principles of refugee protection. Worse, throughout the negotiation process, the

Administration's support for President Aristide has been tacitly conditioned upon his silence on the refugee issue. In recent months, as even Haitians deemed high priority asylum cases were arrested upon return to Port-au-Prince, the U.S. has continued to defend this abhorrent policy. In order to justify the continuing practice of summary repatriation, the Clinton administration has relied on the fig leaf of a seriously flawed in-country processing program. The Administration steadfastly refuses to consider alternatives to this policy, such as regional safe havens, and instead downplays the risks faced by Haitians who are returned to Port-au-Prince. Despite the violence in the streets of Port-au-Prince, the U.S. Embassy remains largely silent on human rights abuses, an approach reflected in the errors and omissions in the State Department's annual country report.

If the Clinton administration intends to regain the credibility it has lost, it must take the following steps immediately:

- ◆ Review the entire U.S. strategy for restoring democracy to Haiti by starting anew with a commitment to emphasize human rights protections and accountability for abusers.
- ◆ Oppose publicly and explicitly any broad amnesty that would absolve members of the Haitian armed forces and their supporters for serious human rights abuses committed since the September 1991 coup. U.S. support for a blanket amnesty undermines the very goals the U.S. claims to advocate — support for human rights and the rule of law. Any quick political advantage gained by supporting a broad amnesty will be short-lived since democracy cannot be built on a foundation of impunity for murder and torture.
- ◆ Appoint a new special envoy to Haiti in order to signify a change of policy. By promoting a flawed U.S. policy that downplays human rights concerns, Ambassador Pezzullo has lost credibility. He should be replaced by an individual with a proven commitment to human rights.
- ◆ End the summary repatriation of Haitian boat people. Forcibly repatriating fleeing Haitians, without regard to their legitimate claims for asylum, violates internationally recognized principles of refugee protection. The in-country refugee processing program is chronically deficient and under no circumstances should serve as the only alternative for asylum seekers.
- ◆ Promote a multilateral, regionally-based response to the refugee crisis, including the establishment of one or more safe havens where screening can occur so that those with credible claims of persecution are not forcibly returned. Any safe haven should employ the good offices of the United Nations High Commissioner for Refugees to ensure observance of basic principles of refugee protection.
- ◆ End the current policy of downplaying the human rights crisis in Haiti by immediately and publicly denouncing serious human rights abuses as they occur and identifying the perpetrators.
- ◆ Insist on the creation of a separate police force, answerable to the Ministry of Justice, as an essential component in restoring democracy and bringing the Haitian police under the rule of law.
- ◆ Call for the return of a significantly enlarged UN/OAS International Civilian Mission to monitor human rights throughout Haiti and to collect information about abuses that could be used to purge the armed forces of abusive members and to prevent the hiring of the armed civilians now engaging in widespread human rights abuses.
- ◆ Target sanctions more carefully to exert pressure on those who have in their hands the key to change in Haiti. The list of approximately 564 Haitians whose assets will be frozen and who will be denied visas by the U.S. is not enough. Much of its impact is lost by the fact that the complete list is not public. An effort must be made to include civilians whose support for the de facto regime warrant personalized sanctions.
- ◆ Propose to the UN and OAS that all other countries join in similar targeted sanctions and make public the list of those individuals whose actions against democracy and human rights in Haiti deserve international stigmatization.

## II. OVERVIEW

Terror, intimidation, and the nightmare of reborn Duvalierism have become the Haitian citizens' daily reality as military rule continues for a third year. As successive internationally-supported efforts to negotiate President Jean-Bertrand Aristide's return have failed, the army has come to believe that it can retain power indefinitely. To this end, it has reneged on successive agreements and used armed civilian thugs to drive off United Nations-backed U.S. and Canadian military instructors. Although the Armed Forces of Haiti (*Forces Armées d'Haïti*, FAD'H) remain nominally steady at some 7,000 men, their strength and sway has grown since the coup with the addition of tens of thousands of civilian *attachés*.<sup>1</sup> In the second half of 1993, these bands of thugs were fashioned into the quasi-political organization known as the Front for the Advancement and Progress of Haiti (*Front pour l'Avancement et le Progrès d'Haïti*, FRAPH). FRAPH, which sounds like the French word for "hit," has been nurtured by the military since its emergence in September 1993.

The Clinton administration, while more active than the previous administration in pushing for the restoration of democracy to Haiti, has failed to make respect for human rights a central component in its policy toward Haiti. Throughout the year, the administration carried out an indiscriminate and inhumane policy of forcibly repatriating Haitians fleeing well-documented persecution. And, in order to defend its refugee policy, the administration alternately ignored or downplayed human rights, despite the obvious deterioration in the human rights situation. (See Section IX)

The administration continued to ignore human rights during the Governors Island negotiations, when it refused to support proposals that would hold human rights violators accountable or guarantee respect for human rights in the future. The administration's public reaction to an alarming increase in reports of political killings in Cité Soleil in February and March, for example, was limited to a weak press statement issued only in Haiti that failed to blame the army and its supporters for the murders.<sup>2</sup>

As a political solution appeared more and more remote, political violence continued unimpeded, with seventy-one murders committed between February 1 and mid-March, in Port-au-Prince alone, under investigation by the United Nations/Organization of American States' International Civilian Mission. There has also been an increase in reports of disappearances, politically-motivated rapes, and arbitrary arrests during the first months of 1994. Residents of Port-au-Prince's Cité Soleil, who are perceived by the military and its backers as Aristide supporters, have been particularly targeted by the heightened violence, especially since the December 27, 1993 massacre there. (See Section VIII).

The recent violations are only the most recent attacks in the consistent campaign of terror against Haitians. In the first half of 1993, the military continued to restrict basic freedoms in Haiti — banning public support for Aristide, barring most meetings, and intimidating the independent media with violence and threats. Arbitrary arrest, beatings, and torture, including rape, while in detention continued to be the rule rather than the exception. The deployment of the International Civilian Mission (MICIVIH) beginning in February led to certain modifications in the repression, particularly outside the capital. Consistent intervention by observers on behalf of people illegally arrested or mistreated in detention led to releases from prison and somewhat fewer arrests. It also persuaded the military to make greater use of civilian *attachés*, making it more difficult to implicate the army in illegal acts. The presence of the mission emboldened local groups to organize pro-Aristide rallies in some cities (most of which were swiftly repressed) and communal meetings in several rural areas.

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<sup>1</sup> *Attachés* are civilian, paramilitary troops supported and armed by the Armed Forces of Haiti.

<sup>2</sup> A March 18, 1994 press guidance prepared by the State Department could be interpreted as indirectly blaming President Aristide for the killings. The guidance states, in part: "We believe this repression is a result of the pressure put on all sectors of Haitian society by the existence of a political vacuum and the continuing crisis in the country." The State Department has frequently criticized President Aristide for not appointing a Prime Minister, and therefore creating a political vacuum.

Human rights conditions began to deteriorate immediately following the signing of the Governors Island Agreement in New York on July 3, 1993. The military, aided by its attachés or armed civilians, began a deliberate campaign of heightened terror and violence. Killings, forced disappearances, illegal arrests, beatings, and torture increased sharply in July and August. Conditions deteriorated further after the inauguration of the short-lived constitutional government of Robert Malval and the lifting of the international oil and arms embargo. In the two months before President Aristide's scheduled return on October 30, the army increasingly collaborated with gangs of armed civilians who kidnapped, tortured, and killed Aristide supporters. Armed civilians made nightly visits to many neighborhoods of Port-au-Prince, firing their guns in the air, threatening and arresting residents. Similar bands prevented the Malval government from functioning and blocked the implementation of measures approved at Governors Island that would have led to a restoration of President Aristide's government.

The parameters of the crisis are graphically demonstrated by the rising death toll following the Governors Island agreement. Using figures for political killings or suspicious murders from the International Civilian Mission for the months of May through September 1993, and February 1994, and from Haitian human rights groups in the intervening period, the pattern of violence in relation to political developments is clear.

### Political Killings and Suspicious Murders, May 1993-February 1994<sup>3</sup>

|           |     |
|-----------|-----|
| May       | 9   |
| June      | 5   |
| July      | 34  |
| August    | 33  |
| September | 60+ |
| October   | 80+ |
| November  | 70+ |
| December  | 55+ |
| January   | 30+ |
| February  | 50+ |

Many of the victims were community leaders or members of groups favoring Aristide's return. Others, such as the people killed in the December 27 arson attack in Cité Soleil<sup>4</sup>, died because they lived in the shantytowns where there existed considerable support for Aristide.

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<sup>3</sup> The presence of the International Civilian Mission around the country made it possible for the first time to obtain relatively comprehensive figures on the numbers of victims of human rights violations. Figures from May through September 1993 and February 1994 come from the Mission.

<sup>4</sup> The Justice and Peace Commission reported the identities of 36 people killed during the incident, as well as 25 people disappeared or unaccounted for, and four injured. Investigations into the massacre are continuing, and another credible estimate has put the number of people dead as high as 102. (See Section VIII)

Throughout 1993, civil society continued to fall victim to repression, as it had in the first year after the coup, as HRW/Americas reported in *Silencing a People*.<sup>5</sup> Restrictions on the rights of free speech and free assembly and the virtual ban on meetings by popular organizations, even nonpolitical ones, led to fragmentation and increased demoralization that had a negative impact on grassroots development and self-help projects. The fledgling efforts to organize demonstrations in support of Aristide's return, strengthened by the arrival of the International Civilian Mission, collapsed with the renewed terror that began in September. The only public demonstrations tolerated by those in power since then have been organized by FRAPH and other like-minded groups.

The repression since the Governors Island Accord has created increasing numbers of internally displaced people, described as "in hiding" or *marronage*. The forced displacement of tens, if not hundreds of thousands of Haitians is part of the military's strategy to destroy all forms of organization or opposition. The high level of internal displacement has resulted in severe economic hardship as families are separated and lose their already limited sources of income.

Pressures on the independent media, in the form of threats, intimidation, arrests, and violence, have forced provincial radio stations to shut down and caused radio and television stations in Port-au-Prince to practice increased self-censorship. Journalists have been forced into hiding, further impeding the flow of information both locally and internationally.

### **International Efforts Intensify**

The international community actively engaged in efforts to resolve the Haitian crisis in 1993. Dante Caputo, the former Argentine foreign minister named as mediator by the United Nations (UN) and the Organization of American States (OAS), shuttled back and forth from Port-au-Prince to Washington and New York throughout the year. His first success came on February 9, when *de facto* Prime Minister Marc Bazin agreed to President Aristide's request for the deployment of a civilian human rights monitoring team. When in June the military failed to abide by its commitment to seek a resolution to the crisis, the hitherto feeble OAS trade embargo was transformed into a worldwide oil and weapons embargo enforced by a cordon of international ships (primarily from the U.S.) and a worldwide freeze of Haitian government assets and those of a small number of wealthy coup supporters. With gasoline growing scarce, and its elite supporters anxious over the actions taken against them, the military indicated its willingness to meet with Aristide and negotiate a settlement. At Governors Island, Caputo and Lawrence Pezzullo, the U.S. Special Advisor on Haiti, crafted an agreement that called for Aristide's return on October 30, after the confirmation of a new prime minister, the "early retirement" of General Raoul Cédras, the appointment of a new commander-in-chief, who would appoint the members of the army general staff, an amnesty granted by Aristide within the terms of the Haitian Constitution, and the adoption of a law establishing a new police force, separate from the armed forces, with a commander appointed by the president.

There were troubling elements of the agreement, however, including the pledge to lift the embargo before Aristide's actual return to Haiti, the option for the Haitian parliament to institute a broader amnesty that would encompass serious human rights violations, and the lack of any direct reference to human rights concerns. Aristide, unhappy with the concessions he was forced to make and threatened with the loss of international support, signed the accord under strong pressure from the U.S. and the UN.

Several days of meetings in New York between parliamentarians and representatives of political parties followed, during which the so-called New York Pact, signed on July 16, was hammered out. The Pact called for: a six month "political truce" to facilitate the work of the new government of "national concord;" the swift adoption of legislation by Parliament on nine key points, including the establishment of the new police force; an amnesty; a compensation fund

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<sup>5</sup> Americas Watch (AMW) and the National Coalition for Haitian Refugees (NCHR), *Silencing a People: The Destruction of Civil Society in Haiti* (New York: Human Rights Watch (HRW), 1993). See also: AMW/NCHR, *No Port in a Storm: The Misguided Use of In-country Refugee Processing in Haiti* (New York: HRW, 1993); AMW/NCHR, *Half the Story: The Skewed U.S. Monitoring of Repatriated Refugees* (New York: HRW, 1992); AMW/NCHR, *Return to the Darkest Days: Human Rights in Haiti since the Coup* (New York: HRW, 1991); and AMW/NCHR, *The Aristide Government's Human Rights Record* (New York: HRW, 1991).

for victims of the coup; the abolition of all paramilitary forces; and the establishment of a Conciliation Commission to resolve outstanding disputes, such as the status of members of parliament elected in the disputed elections of January 19, 1993.

President Aristide announced his choice of Robert Malval as prime minister on July 27. Malval, a businessman and scion of an elite family who helped Aristide organize a successful conference in July of Haitian businesspeople in Miami, was ratified without difficulty by the two houses of Parliament and on August 27 the embargo was suspended. Malval's cabinet, including representatives of five political parties and two members of the original Aristide cabinet, was sworn in on September 2.

### **Implementation of Governors Island Accord Collapses**

Throughout September and October, members of the Malval government were prevented, sometimes violently, from assuming office. Groups of armed civilians assembled around and within government buildings, deterring government officials from approaching their own offices. Even Prime Minister Malval was forced to work at home for his entire tenure because the state-owned building where he proposed to establish his offices remained occupied by attachés.

The most violent attack by armed civilian attachés attempting to block officials from assuming their posts took place on September 8, 1993 during the ceremony to reinstate Evans Paul as mayor of Port-au-Prince. (See Section VII) The attachés killed at least three people and seriously wounded many others as the police stood by and did nothing. The preliminary account of the incident prepared by the public prosecutor identified some of the armed men as active members of the armed forces.<sup>6</sup>

Although serious human rights violations had increased following the signing of the Governors Island Accord on July 3, the attack at city hall was the first significant indication that the military would betray its Governors Island commitment. Confirmation of their intentions quickly followed:

- ◆ On September 11, prominent Aristide supporter and businessman Antoine Izméry was assassinated by men in civilian clothes who received assistance from the military to carry out the murder. (See Section V)
- ◆ Armed attachés and FRAPH members staged a loud demonstration at the Port-au-Prince dock — in the presence of a large number of police who did not intervene — leading to the withdrawal of the USS *Harlan County* on October 11. (See Section VII)
- ◆ Guy Malary, minister of justice in the Malval government, was gunned down in his car as he left work in the early afternoon of October 14, just after he had presented to parliament a proposed law creating the new civilian police force. (See Section V)

While these prominent cases were the clearest demonstrations of the human rights crisis in Haiti, this report describes a relentless campaign of terror throughout the past year against Haitians citizens. The report also graphically illustrates the disastrous consequences of the international community's insistence on pursuing a solution to Haiti's crisis without due regard for human rights concerns. In one positive development, the international community supported the creation of the UN/OAS International Civilian Mission to monitor human rights, yet it too fell victim to the generally flawed policy toward Haiti.

## **III. THE INTERNATIONAL CIVILIAN MISSION**

After months of urging non-governmental human rights groups to make frequent visits to Haiti, President Aristide in mid-1992 began to prod international organizations to dispatch a team of observers. Many Haitians hoped that

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<sup>6</sup> The prosecutor resigned and the final report was never issued.

civilian monitors would have the same effect that hundreds of UN and OAS observers had during the December 1990 elections, when they helped to deter violence, allowing Haitians to express themselves without fear of military retaliation. The OAS obtained the *de facto* government's approval for a group of eighteen monitors in September 1992, but the army restricted their freedom of movement and limited their effectiveness.

These eighteen monitors were incorporated into the new mission, forty members of which arrived in Haiti on February 14, 1993. The International Civilian Mission in Haiti (MICIVIH) opened its first provincial office in Jérémie, in the Grand Anse province, on March 5; by the end of March, the Mission had offices in all nine departmental capitals. At the time of its evacuation from Haiti, the mission comprised over 160 observers in thirteen regional team offices, thirty human rights and media personnel in the central office, in addition to the administrative staff. It was the largest deployment of human rights observers in any international operation to date. Colin Granderson, the Trinidadian diplomat who supervised the earlier, smaller OAS mission, led the international team. Ian Martin, the former secretary-general of Amnesty International, served as the Director for Human Rights, and brought the perspective and experience of a nongovernmental human rights organization to the operation.

The Mission's terms of reference defined its role as "help[ing] to guarantee the respect in Haiti for the human rights mentioned in the Haitian Constitution and in particular the international instruments to which Haiti is party, in particular the International Convention on Civil and Political Rights and the American Convention on Human Rights." It was to "obtain information on the human rights situation in Haiti and make appropriate recommendations to promote and protect human rights," paying "special attention to respect for the right to life, personal safety and security, freedom of expression and freedom of association."

The observers had the right to go "immediately...to any place or establishment where possible human rights violations may have occurred" (*ou seraient signalées d'éventuelles violations des droits de l'homme*). The Mission was forbidden "to participate or join in political demonstrations" but could observe them. For their part, the Haitian authorities promised to "see to...the security of persons who have communicated information, brought testimony or furnished evidence of any kind" to the Mission, and to take measures to ensure the safety of Mission members.

The military often violated the Mission's terms of reference, by arbitrarily denying observers access to many prisons and lockups, by failing to protect people who communicated with the Mission, and by allowing soldiers to threaten and harass observers.<sup>7</sup>

The Mission sought to have a "correct dialogue" with the army at national, regional and local levels, and contacts were made with most commanders. The Mission reported in late October, however, that "attempts since July to meet with the Chief of Police of the metropolitan area [Joseph Michel François] have been unsuccessful."

In a July interview, François leveled bizarre charges against the Mission.

If everything were quiet in the country, they would have no reason to stay here. So they encourage people to have demonstrations so that they can have the police beat them, they make the police nervous so they do bad things.<sup>8</sup>

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<sup>7</sup> In Petite Rivière de Bayonnais in the Artibonite, for instance, immediately after a human rights education meeting organized by the Mission on October 13, "the only two people who spoke during the meeting were arrested in full view of mission observers and others by a corporal and an attaché and taken to the military post." One of them was seen by observers in the folded *djak* position, where a stick is placed behind a person's knees while his wrists and ankles are tied together. He is then either pushed to the ground or suspended from a bar and beaten. (United Nations Secretary-General, *The Situation of Democracy and Human Rights in Haiti*, A/48/532/Add.1 (New York: UNIPUB, November 18, 1993).

<sup>8</sup> Kathie Klarreich, "Haitian Military Puts Positive Spin on Its Rule," *San Francisco Chronicle*, July 23, 1993.

In each report it issued, the Mission noted the military's failure to launch investigations and take action against abusive officers and enlisted men when presented with information of particularly egregious human rights violations. "In a very small number of cases the Mission has been informed orally that the alleged perpetrator of a human rights violation has been placed under arrest. It has never been informed of any subsequent action and is certainly not aware of any member of the FAD'H being brought before the civilian courts, which under the Constitution have jurisdiction over such matters."<sup>9</sup>

The Mission urged the army high command to stress publicly the importance of all FAD'H members to respect the rights of personal safety and security and to assure those who had gone into hiding that they safely could return home. No such statements were ever made.

When members of the Mission first began to work in the provinces, the army was wary and somewhat cautious. In some areas, soldiers warned the population not to make contact with the Mission. Nevertheless, thousands of people did report human rights violations to the Mission, often jeopardizing their own safety.

Ricardo Chery, a founder of the Union of National Democratic Youth, who lived in the Raboteau neighborhood of Gonaïves, frequently exchanged information about human rights violations with the local office of the Mission. On April 21, soldiers arrested him and took him to the Raboteau police post, where they beat him violently on his left side and the head. They told him to lie on the ground and they began pulling him in opposite directions. Then a soldier known as Karetane began whipping him. After a while the soldiers took him to the Toussaint L'Ouverture army base. At the base, he said,

the jailer of the prison, Corporal Manno, searched my pockets and found the telephone number of the civilian mission. Sergeant Fanor then hit me. Corporal Manno ordered me to be tortured with the *djak*. I was beaten 100 times with a club. The next day I was hit with a club ten more times.

On Thursday April 22, Chery was brought before Justice of the Peace Pierre-Antoine Cherilus. The judge said he had no time to deal with the case, and Chery was sent back to prison, where he continued to be beaten until his release on April 29.<sup>10</sup>

In another case, André Elie, a member of the Papaye Peasant Movement (*Mouvement Paysan de Papaye*, MPP) with a small shop in Hinche, became friendly with observers of the Mission. One night in early May, men in civilian clothing broke into Elie's house and took him away. His frantic wife ran to the office of the Mission at 4:00 A.M. The Mission found Elie on the side of the road an hour later, where he had been left for dead. "His body was covered with at least a half-inch of coagulated blood in the areas where he had been beaten," the local coordinator for the Mission, Jean René Marcoux, reported. Elie said that he had been beaten 750 times: 250 for his membership in MPP, 250 for the contacts with Mission observers, and 250 for allegedly being pro-*Lavalas*,<sup>11</sup> according to his assailants.

The Mission was evacuated from Haiti in the middle of October, ostensibly out of concern for the security of its personnel. The decision to leave, however, was precipitated by the USS *Harlan County's* retreat and was more political than practical. Interim measures, such as keeping the observers on suspended duty in Port-au-Prince, might have satisfied security concerns. Within two days of the United States' loss of will, the French cancelled their training

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<sup>9</sup> UN Secretary-General, *The Situation of Democracy and Human Rights in Haiti, A/48/1993* (New York: UNIPUB, October 25, 1993).

<sup>10</sup> Interview, Port-au-Prince, May 1993.

<sup>11</sup> *Lavalas* is the Creole word meaning "flood" or "landslide"; as used colloquially, it refers to the broad-based popular movement that elected President Aristide.

mission, the Canadians withdrew police personnel already in the country, and the Mission was sent to Santo Domingo, sending the clear message that the international community was retreating from Haiti.<sup>12</sup>

The Mission's absence was keenly felt in provincial towns, where their presence had reassured ordinary Haitians of the international community's concern and kept the military, if not on good behavior, at least wary of exposing themselves to criticism. In towns like Gonaïves, the Mission's presence helped make it possible for Haitians to demonstrate their support for President Aristide. In Port-au-Prince, its presence was less effective, and indeed the observers felt helpless in the face of the increasing violence in September and October. Instances of deliberate violence in front of the mission led many Haitians to question the value of a mission that had no mandate to intervene to prevent human rights violations.

#### **IV. FRONT FOR THE ADVANCEMENT AND PROGRESS OF HAITI (FRAPH)**

Many of the worst abuses of the post-Governors Island period have been carried out by the neo-Duvalierist group Front for the Advancement and Progress of Haiti (*Front pour l'Avancement et le Progrès d'Haïti*, FRAPH), which has cultivated anti-foreigner nationalism and called for an end to UN and OAS involvement in Haiti.

FRAPH, while ostensibly an independent political organization, functions as a surrogate for the military. Its activities, including public demonstrations, violent thuggery, and assassinations, are tolerated, and even encouraged, by the army. FRAPH openly identifies with the late François Duvalier (Papa Doc), who ruled Haiti through terror from 1957 to 1971. Its leaders and spokesmen are Emmanuel Constant, 37, son of an army commander under Duvalier and nephew of Bishop Emmanuel Constant of Gonaïves, and Jodel Chamblain, a former soldier said to have taken part in the November 1987 election massacre and a participant in the January 1991 attempted coup d'etat led by Roger Lafontant.<sup>13</sup> Chamblain is also a former Tonton Macoute who claims his pregnant wife was murdered by a pro-Aristide mob in 1991.<sup>14</sup>

The group has attracted the support of Duvalierist political movements disenfranchised since 1986 and conservative anti-Aristide politicians not previously identified as Duvalierists. It makes use of its virtual monopoly on public discourse by building local chapters around the country, during a time when the democratic, popular organizations that emerged since 1986 have been rooted out or forced underground by violent persecution. FRAPH leaders claim the organization has 300,000 members. (This figure is probably optimistic but FRAPH is recruiting throughout the country and from all accounts its membership is growing rapidly.) By January 1994, the group had a presence in virtually every town and communal section. Although many members are attachés, thugs or former Tontons Macoutes, some men (and women) join defensively, seeking a FRAPH card as protection for themselves and their families. The decision has also been described as a desperate reaction to poverty and despair of political change, as FRAPH membership carries with it economic benefits.

In one town in the Central Plateau, for instance, a lay Catholic Church leader who was arrested and badly beaten in September 1993 joined FRAPH in early 1994 in order to remain in his home town. An elderly man, whose son is the town's deputy mayor and has been in hiding for months, had to leave the area himself after he refused to join FRAPH.

FRAPH's national network owes a great deal to the old Tontons Macoutes organization. Unlike the Macoutes, however, which were created to serve as a counterweight to the army, FRAPH and the army work hand in hand. In Port-au-Prince, FRAPH is organizing in such slums as Cité Soleil, where it is campaigning to return the neighborhood to its

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<sup>12</sup> At the beginning of February 1994, a small group of observers returned to Haiti.

<sup>13</sup> OAS/UN International Civilian Mission in Haiti, *Report on the Assassination of Antoine Izméry*, November 1993.

<sup>14</sup> Bella Stumbo, "A Place Called Fear," *Vanity Fair*, February 1994.

old name of Cité Simone, honoring François Duvalier's wife.<sup>15</sup> In this area, as in others, FRAPH campaigns through intimidation and threats of violence. Its members are forcing bus drivers, under threat of violence, to replace direction signs reading Cité Soleil with Cité Simone.

On September 22, the anniversary of François Duvalier's 1957 election, several hundred people supporting FRAPH held a rowdy march through central Port-au-Prince. Carrying the pre-1986 black and red flag and chanting, "Long live Duvalier, Aristide is finished," they entered the Museum of the National Pantheon for the unveiling of a new exhibit honoring Duvalier. The museum exhibit, displaying Papa Doc's pistol, black homburg and medical bag — items that are horrifying to many Haitians — was an ideological coup for the neo-Duvalierist movement.

## V. POLITICAL ASSASSINATIONS<sup>16</sup>

### Assassination of Antoine Izméry

On September 11, 1993, Antoine Izméry was dragged from a church during mass and shot point blank in the head as he knelt on the street. The shocking murder of this militantly pro-Aristide businessman was carried out by men in civilian clothes, with active support from the military.

Izméry was a founding member of the Helping Hands Committee to Spread the Truth (*Komite Mete Men pou Verite Blayi*, KOMEVEB), which organized the September 11 event — a mass in memory of the victims of the St. Jean Bosco massacre of September 11, 1988, a display of pictures of victims of the coup d'etat, and the posting of leaflets in the nearby Place Jérémie.<sup>17</sup> The mass began at 9:00 A.M., an hour later than planned. Approximately sixty people attended the event, many of them journalists and foreign observers. According to Father Antoine Adrien, one of President Aristide's close advisors, just before the service, an unidentified man entered and said, "Bunch of communists watch out! The blood that will flow outside will be on your hands!" The priests and organizers met and discussed whether they should proceed with the mass. Izméry, Adrien said, told them "Listen, we won't do the march outside, but we came to do a mass, there's no reason not to do it. Because the people who have been waiting for an hour for us, we should respect them. They came for that, let's do a short mass."<sup>18</sup>

The service went forward, with eight priests participating. At 9:30 a tall man carrying a gun (and by some accounts, a walkie-talkie), entered through the main door of the church. Father Antoine Adrien had just finished his sermon, calling for an end to the spilling of blood. Shots were heard outside the church and the people inside ran toward the altar or out the doors. A group of men entered and ordered Izméry to leave the church with them. On the street outside the church, they forced him to his knees, struck him, put a gun to his head, and shot him. A second man, Jean-Claude Maturin, who probably witnessed the attack, was also shot to death. His body was left just across the avenue from the church.

The International Civilian Mission conducted a thorough investigation into the killings. They interviewed twenty-seven eyewitnesses, located photographic and documentary evidence, and took testimony from the Mission team

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<sup>15</sup> An Aristide stronghold, Cité Soleil, or Sun City, took its name from the Catholic Radio Soleil, which played a key role in overturning the Duvalier dictatorship.

<sup>16</sup> This section contains political assassinations that took place between the July 3, 1993 signing of the Governors Island Accord and the October 30, 1993, scheduled return of President Aristide. More recent political assassinations are included in the section entitled, *Terror Continues*.

<sup>17</sup> The group, which was formed in May 1993 by several church, trade union, and popular organizations to spur resistance to the coup d'etat, had previously issued several press releases and sponsored a day of pasting posters and raising banners in Petionville on August 17, calling for the return of Aristide. On that occasion, police arrested Father Yvon Massac, Jonathan Vergile, and Victorin Andre. They were transferred to the National Penitentiary and freed on August 19.

<sup>18</sup> Interview with Adrien, "Yo touye Antwàn Izmeri an piblik," *Libète*, September 15-21, 1993.

members present. The Mission's *Report on the Assassination of Antoine Izméry* concluded that "the elaborate plan to assassinate Antoine Izméry could not have been carried out without the complicity, if not the direct participation, of highly placed members of the Haitian armed forces."<sup>19</sup>

This conclusion is based on the identification of a "sophisticated two-phase control operation." The first phase consisted of "systematic and intensive patrol of the zone" by police and attachés. "One group who participated in [the] operation was deployed from a police office and a military office situated only 100 meters from the church." The preliminary phase had three objectives: to intimidate and deter KOMEVEB, which organized the march and memorial mass; to contain and repress those who participated in the planned activities; and to support the group responsible for executing Izméry. Another group, the Mission report concluded, was responsible for the second phase of the operation.

The group charged with carrying out the assassination included at least 15 people. Witnesses identified some of them, in particular one officer of the FAD'H, one man who had been recognized as a torturer in a clandestine detention center a short time before, and several attachés. The group was equipped with automatic handguns and hand-held and mobile radio equipment. The attack itself was well-coordinated and aimed solely at Antoine Izméry. The church grounds and the adjacent street were placed under the control of armed men, who violently dispersed passersby. Other armed men, some carrying machine guns, blocked traffic in order to create an outer controlled zone for the execution.

The killers benefitted from the complicity and support of members of the security forces (some of them in uniform) present at the scene. For instance, the assassination team arrived and departed the scene protected and escorted by police vehicles.

The report names the following participants in the operation: Lamour, an officer from the Cafeteria (the major downtown Port-au-Prince police station); Simon, the former director of the National Office of Life Insurance (ONAV); Claudette Godet, a minister in the Jean-Jacques Honorat government of 1991-1992; Ti Lamarre, an employee of the immigration service; and attachés Elysée Jean-François,<sup>20</sup> Franklin Ronald, Zimbabwe, Ti Nono, Ti Blan, Eddy le Tueur, and Rigal. The attaché reported to have killed Izméry is identified as Gros Fanfan,<sup>21</sup> while officer Lamour was said to have been inside the church directing the operation. Spotted in a car with Gros Fanfan were three prominent opponents of Aristide: Louis Jodel Chamblain, leader of FRAPH; Mirabeau, former bodyguard for murdered Duvalierist leader Roger Lafontant; and Fritz-Pierre, a leader of attachés in Port-au-Prince.

### **Assassination of Justice Minister Guy Malary**

Guy Malary, minister of justice in the Malval government, was gunned down in his car as he left work in the early afternoon of October 14. His driver and a bodyguard were also killed, and a fourth man, possibly another bodyguard, was wounded.

The minister was ambushed leaving his private law office on Avenue Jean Paul II, reportedly after learning that armed men were in the area. People in the neighborhood heard a barrage of gunfire lasting several minutes. Malary's driver lost control of the car, which slammed into a wall and flipped over on Rue Jose Marti. The evidence suggests that Malary and his companions were shot at close range after the accident.

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<sup>19</sup> OAS/UN International Civilian Mission in Haiti, *Report on the Assassination of Antoine Izméry*. November 1993.

<sup>20</sup> Jean-François is believed to have participated in the November 29, 1987 election day massacre and was sentenced to seven years in prison for his part in the September 11, 1988 massacre at the church of St. Jean Bosco. He was released, however, following the 1991 coup d'état. Since his liberation, he has been identified as a torturer in a clandestine detention center and as an accomplice in the February 25, 1993, attack on Bishop Willy Romelus at the Port-au-Prince cathedral.

<sup>21</sup> The Mission report describes Gros Fanfan as a former *Tonton Macoute* from the National Palace, and "according to one source, he is one of Lieutenant Colonel Michel François's confidantes."

The International Civilian Mission was prevented from approaching the scene of the crime for more than an hour. When finally granted permission, they saw the commander of the Investigation and Anti-gang Service of the Police (*Service d'investigation et de recherches Anti-gang*) ordering the round-up of frightened witnesses. They also noted that Malary's vehicle "bore the marks of a large number of small-calibre bullets and several holes of large diameter indicating the use of heavy assault weapons."<sup>22</sup>

The fifty-year-old Malary was an established Port-au-Prince attorney, a graduate of Howard University in Washington, D.C., and a political moderate, counting the U.S. embassy among his clients. Before accepting his first government post, Malary represented several victims of military violence in their efforts to seek justice, was a consultant to the International Civilian Mission and assisted in the training of its observers. Just before his assassination, he presented parliament with a proposed law creating the new civilian police force.

### Other Assassinations

Most of those killed since the signing of the Governors Island Agreement were not known beyond their communities; in many cases we do not even know their names. The International Civilian Mission reported on activists killed in September and October.

The victims were members of popular organizations considered pro-*Lavalas*...in particular leaders who continued to be active in their localities. The perpetrators were armed men mostly operating in civilian clothing, usually at nightfall, without covering their faces. They were armed with automatic weapons (Uzis and M16s) and operated in red or white pick-up vehicles, sometimes with government plates. In several cases there was information regarding a direct link between the perpetrators and the FAD'H, and the impunity and logistical support of their operation is strongly indicative of FAD'H involvement. Their activities appear to be supported by a major intelligence operation..."<sup>23</sup>

Here, in brief, are the stories of some of their deaths.

- ◆ Martial Milord Auréus, an active member of the *Organization Populaire de Bolosse* (OPB) in Carrefour, was seized on September 26, 1993, by armed men in a white pick-up truck without plates. His body was found several hours later on the Route de Pharnal, with his hands tied behind his back and a bullethole in the left temple. During his funeral on October 4, four other members of the OPB were abducted by armed men in a white pick-up without plates. Their fate is unknown.<sup>24</sup>
- ◆ Two armed men in civilian clothes seized Orilia Joseph, 41, at her house in Cité Soleil at 10:00 A.M. on October 10. In the presence of her two teenage daughters, they tied her up with electric cable and took her away on their motorcycle. Neighborhood residents said that the men, believed to be attachés associated with the military hospital, tortured Joseph in a house in Drouillard 2 and then tried to hand her over to the Cité Soleil police post, which refused custody because of her condition. Her mutilated body was found by her daughter the following day on the road near Drouillard. Joseph had worked as a nanny for Rolande Dorancy, director of the Miami Haitian Refugee Center, and had been associated with the Salesian Brothers center in Cité Soleil and the popular organization *SAJ-Veye Yo*.
- ◆ Andrel Fortuné was shot dead by an army corporal in Lascachobas in the Central Plateau on August 16. A political activist and member of the Papaye Peasant Movement (*Mouvement Paysan de Papaye*, MPP), Fortuné had been

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<sup>22</sup> UN Secretary-General, *The Situation of Democracy and Human Rights in Haiti A/48/532/Add.1* (New York: UNIPUB, November 18, 1993).

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

arrested in May 1992 and lived in hiding most of the time. He was turned down twice for refugee status in the United States.

- ◆ Ronald Jean-François was shot dead on September 16 by a police corporal after he was taken from his home in Cité Soleil by three armed men in civilian clothes. Eyewitnesses said attachés with machine guns started beating him as they interrogated him about pasting up leaflets with pictures of Aristide a few days earlier. They took him to the Soleil 17 area, where he was shot several times by a corporal assigned to the port police.<sup>25</sup>
- ◆ The body of Délice Jackie was found on July 13 in Source Puantes on the main road north out of Port-au-Prince. The young man shared a house with his cousin, press photographer Claudy Vilmé, who had been arrested on July 2 while taking pictures of soldiers at a gas station. After Vilmé was released, he said publicly that he had been held at the old Fort Dimanche, an infamous police station and prison supposedly closed several years ago. Délice Jackie is believed to have been shot to death because of his connection to Vilmé.<sup>26</sup>
- ◆ Jean-Marc Dessources was killed in the Canapé Vert neighborhood of Port-au-Prince on July 14. Witnesses said two men wearing military uniforms burst into his house at 2:00 A.M. and shouted "You are always talking about the return of Aristide, but you won't live to see it." They shot him in the back and head.<sup>27</sup>
- ◆ Christiane Saron, 24, was shot dead on August 13, outside her home in Quartier Morin, near Cap Haïtien. A group of six men in military uniforms forced their way into her house, demanding all the family's money. Survivors said two of the men carried .38-caliber revolvers and addressed each other as "sergeant" and "corporal." They shot Saron at about 2:00 A.M., when she surprised them in the living room.<sup>28</sup>
- ◆ The bullet-riddled bodies of two men were discovered near the Port-au-Prince airport on July 27. Eyewitnesses told the International Civilian Mission that they recognized two of the assassins as policemen who lived in the area and worked for the Anti-gang Service.<sup>29</sup>
- ◆ In an attempted assassination, a political activist who was a member of several community organizations in Carrefour was stopped on the street late in the evening of September 23 by a patrol of some twenty soldiers in olive-green uniform. They ordered the man to walk in front of them and then shot him several times. Although left for dead, the man was found and brought for medical treatment.<sup>30</sup>

## VI. BEFORE THE GOVERNORS ISLAND AGREEMENT OF JULY 3

Although human rights conditions dramatically worsened following the Governors Island Agreement, abuses were common in the first six months of 1993 as well. The repression that characterized military rule since the coup — silencing dissenting voices and the destruction of popular democratic organizations — continued to prevail. Throughout most of the country, meetings by groups not supportive of army rule were, in effect, banned. Following the arrival in Haiti of the International Civilian Mission, attempts were made on a number of occasions by Aristide supporters to

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<sup>25</sup> UN Secretary-General, *Situation*, October 25, 1993.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> UN Secretary-General, *Situation*, November 18, 1993.

organize demonstrations, most of which were repressed by the military. People caught carrying pro-democracy leaflets faced arrest and torture. Journalists reporting human rights abuses or viewed as favoring Aristide were frequently arrested or forced into hiding.

### **Trade Unionists Arrested and Tortured**

On April 23, police arrested three trade unionists from the General Worker's Union (*Centrale General des Travailleurs*, CGT). Cajuste Lexius, Fabonor St. Vil, and Sauver Aurelus were arrested in front of Radio Caraïbes in Port-au-Prince where they had gone to distribute a press release announcing a national strike.

The soldiers took the three men to the Anti-gang Service, where they placed Lexius in a small room and tortured him in the *djak* position, beating him with a club. "There were about 50 soldiers," Lexius described in a June 1993 interview with NCHR.

They got on top of me one after the other. One of them took a club and began to beat me on the buttocks. When he was tired he passed the club to another, and on and on until I lost consciousness. When I regained consciousness [the following afternoon] I was in a nasty smelling cell with about 25 other prisoners. I was really suffering and my buttocks were bleeding. Saturday evening members of my family brought food, but I was not allowed to see them. Before the visit of my family, I had received neither food nor drink. I was in very bad health—I was not able to do anything by myself; I was not even able to eat until Monday April 26.

On the morning of the 26th, the police fed and cleaned up Lexius in preparation for a visit from members of the International Civilian Mission, who had been trying to visit him since April 24. The Haitian doctor who accompanied the mission recommended that Lexius be hospitalized immediately. He was sent to the military hospital, where he was guarded by four men in civilian clothes who Police Chief Michel François described as there for "his protection." On April 28, military doctors operated on his buttocks. On May 21, he was freed without a hearing. "After I was released I went into hiding. I am worried about my health. I have never seen the results of my X-ray and I still have pain where they operated. Currently I am seeing a private doctor." Lexius continues to suffer from severe kidney problems.

Sauver Aurelus described a similar beating by the Anti-Gang Service police.

They kicked me, beat me and used the *djak*. Two military held my head and beat it against the ground. There were about 25 soldiers in my room and they took turns beating me while I was lying on the ground. I received about 150 blows from a club. I received one which crushed my finger and I lost consciousness.<sup>31</sup>

### **Aristide Supporters Arrested and Tortured**

Members of the Lavalas Political Organization (*Organization Politique Lavalas*, OPL)<sup>32</sup> in the northwest town of Mole St. Nicolas were targeted after leaflets were distributed announcing the March 29 commemoration of the ratification of the 1987 Haitian Constitution.

In an illegal search on March 30, soldiers discovered pictures of Aristide and OPL documents in Manistin Capricien's house. They arrested and later tortured him and sought other members of the group, all of whom fled to Port-au-Prince.

Describing his treatment at the army post where he was held, Capricien told NCHR that

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<sup>31</sup> Interview, Port-au-Prince, June 1993.

<sup>32</sup> The OPL is a loose national network founded since the coup by prominent Aristide supporters.

they began beating me on my back, my buttocks, my midsection and my eyes....I lost consciousness. Later I was forced to cut up pictures of Aristide and eat them while drinking a glass of water. They continued to hit me on my stomach, my eyes and my waist....The next morning they stuck a rock in my mouth and shaved my head. They forced me to eat my hair with bread. Later the Captain [Gérard Pierre Charles, no relation to the OPL leader] came into my cell with other soldiers armed with a heavy stick. They forced me to read names taken from the papers found at my house, hitting me after each one I read.<sup>33</sup>

Later that day, March 31, Capricien was brought before the Justice of the Peace, where he was given permission to receive medical treatment at the local hospital. Although he was then told that he was free, police continued to guard his hospital room. Capricien remained at the hospital until April 19, when he felt that he was no longer safe there.

Chantal Bien-Aimé, 28, mother of two and a member of the Popular Assembly of Saint Martin in Port-au-Prince, was arrested on May 11 near the Tête Boeuf market, blindfolded, and taken to the downtown police station known as the Cafeteria. She was accused of distributing leaflets in favor of President Aristide, and beaten on the head and stomach. She was released May 12, complaining of stomach pains; she died from her injuries on May 16. On June 2, at 1:00 A.M., four armed men broke in and searched Bien-Aimé's home, while six others stood guard outside. After searching her home, they beat the occupants.<sup>34</sup>

Louis Gregoire Lauture, who had been employed since April 1991 as the doorkeeper at Lafanmi Selavi, the haven for street boys founded by Father Aristide, was seized on a street in the Pacot neighborhood of Port-au-Prince on August 16. He was blindfolded by men in civilian clothes who took him in a blue pick-up truck to an unknown building where they beat him. The men, whose identity he never learned, also shaved Lauture's head and took all his clothes. They questioned him about Lafanmi Selavi and Aristide and told him they would kill him. Very early on August 18, however, he was driven, while still blindfolded and naked, to a spot on the Boulevard Harry Truman, where he was pushed out onto the street.<sup>35</sup>

### **Attacks on Congregations and Religious Leaders**

As in the early months after the coup, Haiti's churches have proved no sanctuary from military violence. Soldiers and armed civilians have not hesitated to enter churches to beat and arrest congregants when a priest's sermons touched on politics or when they chanted pro-Aristide slogans.

On February 25 at Port-au-Prince's cathedral, a memorial mass was said for the hundreds of victims of the Neptune ferryboat disaster. Bishop Willy Romelus of Jérémie, and a known Aristide supporter, led the mass. His announcement that the authorities had refused to release the victims' corpses for burial caused the congregation to erupt in anger.

Shortly after, armed men in civilian clothes threatened people outside the church, and later surrounded it. The leaders of the International Civilian Mission, Colin Granderson and Michael Moeller, escorted several hundred people out of the cathedral in small groups and drove them to safety. The attachés, nevertheless, beat and arrested dozens of people.

Bishop Romelus, one of the last to leave the cathedral, had been speaking with several foreign diplomats when a crowd of approximately twenty men surrounded him and Paul Dejean of the Karl Leveque Center. They pushed the bishop to the ground, and proceeded to beat and kick him.

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<sup>33</sup> Interview, Port-au-Prince, May 4, 1993.

<sup>34</sup> UN Secretary General, *Interim Report of the International Civilian Mission to Haiti for the Period 9 February - 31 May, 1993*, A/47/960 (New York: UNIPUB, June 3, 1993).

<sup>35</sup> Interview, Port-au-Prince, August 26, 1993.

Michelet Gelin, 29, among the group providing security for Romelus, was assaulted by attachés outside the cathedral but avoided further injury due to the timely appearance of members of the Mission. In the days and weeks that followed, men in civilian clothes searched his home in Fermathe and threatened his family.

A car carrying Father Joseph Simoly, reporter Arlette Joseph of the Voice of America, and eight seminarians was surrounded by trucks just after the mass. Father Simoly later told NCHR,

A policeman forced one person out of my pick-up and took his place, then forced me at gunpoint to drive to the Anti-gang Service. Three or four policemen beat Arlette Joseph, causing her mouth to bleed. They hit me and seminarian Marc Antoine Casimir, who fell to the ground. We were harassed and humiliated. They released us several hours later, telling us that next time we would not be leaving.

Father Simoly also reported previous incidents with the police in Hinche, where he lives. Almost two months before the disturbance at the mass, on January 8, soldiers at the small police post in Hinche had stopped Father Simoly, searched his bag and found a photo of him, which they claimed was of Aristide. They arrested him on charges of distributing leaflets and photos of Aristide.

I drove my truck to the army base with Sergeant Rosalvo Bastien holding his gun and following me in his car. The sergeant called the major and they both proceeded to humiliate me. They accused me of looking like Aristide and preaching liberation theology. They said I was leading Christians into politics and that next time they would beat and kill me.

A week later two soldiers sat in their vehicle in front of the church, waiting for him to begin preaching. "When I saw them," Simoly said, "I decided not to preach, but just to read from the Bible so they wouldn't have any reason to come into the church and harass the people. When the military and section chief saw that I was not going to preach, they left."<sup>36</sup>

In another incident, uniformed soldiers and men in civilian clothes interrupted the Sunday mass at the Church of Notre Dame de Perpetuel Secours in the Bel Air neighborhood of Port-au-Prince on June 27, after young people began shouting "Aristide or death." The mass was televised live on government-run television, allowing viewers nationwide to watch the beatings.

The soldiers released tear gas inside the church and arrested and beat seven people, including Nickson Desrosiers and Enif Pierre, members of the *Plateforme Fond Sant Clair*. The detainees were transferred to police headquarters where they were severely beaten during their interrogation before their release later that day.

Protestant pastors, too, have increasingly been victims. On June 20, Pastor Joseph Ronald of the Evangelical Church of Jesus Christ on Delmas 2 in Port-au-Prince, was kidnapped and tortured after preaching at the former luxury hotel, Habitation LeClerc, in the Martissant neighborhood south of Port-au-Prince.

Pastor Ronald, his wife, and one other person were waiting for a bus in Martissant around 11:00 P.M. when four armed and masked civilians got out of a pick-up truck, grabbed Ronald by the neck and started to beat him.

My wife started to cry and begged them to release me. They hit her on the head, then forced me into the pick-up. They blind-folded me. The truck stopped and I was led out, still unable to see. They grabbed my tie and used it to tie me in the *djak* position. I fell on a cement floor. I was beaten severely and could not lift my left arm because of the extreme pain.

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<sup>36</sup> Interview, Hinche, June 25, 1993.

Pastor Ronald's captors accused him of taking money from Aristide and preaching politics. Later, two men beat him again, tying each of his hands to a fixture above his head. Then they tortured him in the *djak* position. On July 6, over two weeks after his capture, Pastor Ronald was left on the road near Gressier, approximately 20 kilometers south of Port-au-Prince.<sup>37</sup>

### Attacks on Popular Organizations

On April 3, Corporal Charles arrested Ronial Noregène, a member of the Agricultural Workers Union of Savanette (*Syndicat des Travailleurs Agricoles de Savanette, STAS*), in the Central Plateau, and took him to the Savanette police station, accusing him of distributing pamphlets. He attempted to escape but was apprehended, severely beaten on his head and back, and held in prison for two days before he was released.

Members of the Papaye Peasant Movement (*Mouvement Paysan de Papaye, MPP*), based in the Central Plateau, were arrested and beaten for allegedly having leaflets and photos of Aristide. Leonel Paul, president of the Marecage chapter of the MPP, was arrested and severely beaten on May 9 on trumped up charges of possessing propaganda. "It was about 8:00 A.M. when about thirty deputies [of the section chief] came to my house. They tied me up and one of them hit me three times with a club, forcing me to take two tracts [leaflets] that said 'Long Live Aristide's Return.'"

The deputies took Paul to Thomonde, where he spent four days in prison and was beaten sporadically. Members of the International Civilian Mission came to visit him on the fourth day, but they weren't allowed to speak with him. On the fifth day he was transferred to the prison in Hinche, and taken before Major Charles Josel, known as Commander Z. "He ordered me to lie down," Paul said, "and he walked on me. Afterwards, he ordered a soldier to hit me 250 times with a club." Two days later Commander Z ordered soldiers to beat Paul 250 more times. After his wife paid US\$40 (500 gourdes), Paul was freed and subsequently warned not to speak to the Mission. He was told if he ever returned to Hinche he would be killed.<sup>38</sup>

Three section chief deputies arrested Previlus Elvian on June 5 at his home in Perodin, the fifth section of Petite Rivière de l'Artibonite. Section Chief Edner Odeide beat Elvian, a member of the Assembly of Perodin Peasants (*Rassemblement Paysan de Perodin, RPP*), for several hours each day, repeating that he did not like the work Elvian was doing with RPP. Elvian's family had to pay US\$60 (750 gourdes) for his June 9 release after which he went into hiding.<sup>39</sup>

On June 9, police and deputies of the local section chief of Savanette in the Central Plateau arrested MPP member Sylvestre Pedanois, 36. They searched his bag and discovered MPP documents. Pedanois was taken to the home of the section chief, where he was beaten fifty times with a club. The following day he was transferred to the army post where they continued to torture him with the *djak* and *kalot marasa*.<sup>40</sup> He was taken before the justice of the peace on June 11 and released by the prosecutor on the 14th. He later escaped an attempted arrest on the 22nd, following which, he went into hiding.<sup>41</sup>

On June 29, in Zabricot in the Central Plateau, the section chief arrested Odette Fausten and twelve others and brought them to Juanaria, the first communal section of Hinche. He accused them of having a relationship with the section chief under Aristide. They were beaten with clubs and rifle butts and received the *kalot marasa*. On July 2 they

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<sup>37</sup> Interview, Port-au-Prince, July 9, 1993.

<sup>38</sup> Interview, Port-au-Prince, May 1993.

<sup>39</sup> Interview, Port-au-Prince, July 8, 1993.

<sup>40</sup> The *kalot marasa* is a common form of torture in which the assailant simultaneously claps his hands as hard as possible on the victim's ears.

<sup>41</sup> Interview, Hinche, July 25, 1993.

were brought before the justice of the peace in Hinche, where they were charged with illegally meeting to disturb the peace. They were later released on July 5 or 6.<sup>42</sup>

### **Attempts by Displaced Persons to Return Home**

Tens of thousands fled their homes in the immediate aftermath of the coup and though many later returned, waves of renewed repression forced them to take flight once again.

With the establishment of offices of the International Civilian Mission in provincial towns, some popular organizations thought it possible for their members to return home from hiding. At least thirteen people belonging to the Papaye Peasant Movement (MPP) returned to the Central Plateau in March and April. By the end of July, however, all had fled once again having encountered a variety of reprisals.

One of those who tried to return to his home was Hilton Etienne, an active MPP member who had been in hiding for eleven months. Having lived at home for about one month, he told us that "On April 29, about 2:00 A.M., three military and a number of civilians armed with machetes and clubs came to my house. They broke in and arrested me. They tied me up with a cord and began to beat me. Some of the men in civilian dress hit my wife's head against the wall."

They took Etienne to the police post where they tortured him in the *djak*, beating him 200 times with a club. In the car on the way to the Hinche army base, they forced him to lie flat and beat him 150 more times with a club. Once they arrived, he said "they forced me to lie on the ground and I received another 100 blows of the club. I was not able to get up. They dragged me, kicked me and forced me to run."

The next day he was taken to the office of the army commander where he met with International Civilian Mission monitors, who demanded that he be brought before the justice of the peace. At about 11:00 A.M. he was taken there, accompanied by the monitors. The justice of the peace accused Etienne of associating with criminals in order to disturb public order. He was released, however, about 10:00 P.M. that evening.<sup>43</sup>

Junior Esta, an MPP member living in Grand Rivière du Nord, had been in hiding since January 1993, following a November 1992 arrest. He returned to Grand Rivière June 17 to see his sister who was ill. On June 20, accused him of being pro-Lavalas and threatened to kill him. His bag was searched, his belongings taken, and he was beaten by policeman in the street. He spent three days in prison where he was severely beaten. Esta's brother-in-law paid US\$35 (450 gourdes) for his release.<sup>44</sup>

André Pierre, a member of the Assembly of Perodin Peasants (*Rassemblement Paysan de Perodin*, RPP) who had been in hiding since September 1992, returned to Perodin (in the fifth section of Petite Rivière de l'Artibonite, a town five hours walk from any road) on June 10, 1993, after he learned that his father had died.

I was walking in the streets and the section chief, Edner Odeïde, who had arrested me last year, arrested me again with the same accusations, that I was *Lavalas*. He beat me with a club, and told my mother and sister if they did not pay US\$60 (750 gourdes) they would kill me. I spent three days in prison until my family paid the money and I was released.

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<sup>42</sup> UN Secretary-General, *Situation*, October 25, 1993.

<sup>43</sup> Etienne was a member of the *Ti Komite Legliz*, the Justice and Peace Commission of the Catholic Church in Hinche, and was employed in the December 1990 elections as a messenger for the Departmental Electoral Office. He was also responsible for a literacy program that started under Aristide in 1991.

<sup>44</sup> Interview, Port-au-Prince, July 12, 1993.

Following his liberation, Pierre went back into hiding.<sup>45</sup>

Silon Drystal, Elianse Excilan, and Jerome Pierre of Perodin had been in hiding since January 1992. They also returned home for the first time in June 1993. Drystal explained to NCHR, "We were walking on the road home when we crossed paths with the section chief, Edner Odeïde, who was with three attachés: Anatas, Estoroge and Dufel. They immediately recognized us as people who left the area, and they began to beat us with clubs."

Drystal escaped, but attachés beat Excilan and Pierre with their hands and batons and led them to the Perodin military post. They were accused of being pro-Lavalas and were forced to lie down while men in the barracks took turns beating, kicking, and walking on them. They were released the following morning, after their families paid US\$120 (1,600 gourdes).

On July 6, when the interview was conducted, Excilan's arm was broken and his body was badly bruised. He had trouble walking and holding his head up, as did Pierre, who received most of the blows to his face. His jaw was still grossly swollen and he had trouble speaking.<sup>46</sup>

Lormil Rodrigue had been in hiding since his January 1992 arrest in Grand Goave, a town about fifty kilometers west of Port-au-Prince, and returned home on June 4, 1993. As he approached his house, three men in civilian clothing demanded he turn over his weapons to them.

I said I didn't carry arms. They took my International Organization for Migration<sup>47</sup> card which had the date of my interview and said they would take that card to [Police Chief] Michel François to show him that I was leaving the country. They threw me in a pick-up that was headed in the direction of Port-au-Prince. They blindfolded me, and after a little while the truck stopped and they threw me on the ground. I received two *kalot marasa*.

Rodrigue was held blindfolded in a room by himself, without food, until the next day. He was then taken to another place where he spent eight days blindfolded and received almost nothing to eat or drink. He was released without explanation.<sup>48</sup>

### Violations of Press Freedom

While there is no formal censorship of the media, reporters and media outlets know that they are constantly at risk. Many reporters for Radio Tropic-FM, a station that has continued to broadcast news reports throughout the post-coup period, have been arrested, mistreated or threatened in recent months. The best known case is that of Colson Dormé. Dormé, a reporter and archivist for Tropic-FM was kidnapped on February 1, 1993, while covering the arrival of mediator Dante Caputo at the Maïs Gaté Airport. Hundreds of rowdy anti-Caputo demonstrators had gathered there. "I was one of the first journalists to arrive and I felt threatened," he told NCHR.

After filing a brief, live report, Dormé took shelter from the hostile crowd in an outdoor waiting area. "I received a blow to the head from behind. I fell down and felt someone lift me up. They threw me into the back of a pick-up."

Dormé was held blindfolded for a week in a clandestine detention center. His captors shaved his head, made him sleep on a bare floor and fed him only three times. For several days they played Radio Tropic-FM, and whenever the half-hourly news bulletin aired, they kicked and beat him.

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<sup>45</sup> Interview, Port-au-Prince, July 12, 1993.

<sup>46</sup> Interview, Port-au-Prince, July 6, 1993.

<sup>47</sup> The IOM, under contract with the U.S. in-country refugee processing program, conducts preliminary interviews with asylum applicants.

<sup>48</sup> Interview, Port-au-Prince, June 22, 1993.

During his interrogation, his captors insisted that his radio station was financed by the Lavalas movement and tried to persuade Dormé to become an informant. At 10:45 P.M. on February 8, he was dumped, still blindfolded, in front of Tropic-FM on Rue Pavée, Port-au-Prince, wearing only his undershorts and a T-shirt.<sup>49</sup>

On Friday, January 22, Jean-Emile Estimable, a correspondent for Radio Cacique, which has been closed since the coup, was arrested by Section Chief Geles of Ogé, the third section of Marchand Dessalines. Geles took Estimable to Geles's house, where Estimable watched the section chief place leaflets in the correspondent's briefcase. Geles notified the military sub-district at Marchand Dessalines and five soldiers arrived in a pick-up. They tied Estimable up with a rope, put him in the truck and began to beat him.

The section chief's son and about twenty other men in civilian clothes traveled with the soldiers and joined in beating Estimable. They hit him with their rifle butts, hands, and fists and kicked him. Drinking rum, they struck Estimable on the chest with the bottle. Sergeant Amos, identified as the leader of the group, and Corporal Charlemagne were also present.

"They treated me like a football," he said, describing how they beat him the next day at the police station at Dessalines before transporting him to the St. Marc army base. There a Lieutenant Placide and four soldiers continued to torture him. "They pulled on both my ears and folded them. They kicked me many times in the chest. Lt. Placide grabbed my head and banged it several times against the wall. I lost consciousness."

Estimable was not permitted to see a lawyer until February 1. He was sent to the Correctional Court and granted provisional freedom on February 2, 1993.<sup>50</sup>

Reporters for the popular Creole language weekly newspaper, *Libète*, outspoken in its support of President Aristide's return and denunciation of corruption and human rights violations, have received many threats. For security reasons they all write under pseudonyms. The office has received phone threats and street vendors who carry the newspaper have been threatened, beaten, and arrested.<sup>51</sup>

On February 4, 1993, armed men in civilian clothes roughed up three *Libète* vendors, Wilfrid Jean, 30, Jean-Robert Guillaume, and another unidentified man, and destroyed 300 copies of the paper. The incident occurred in front of the government immigration service offices on Avenue John Brown in downtown Port-au-Prince. On the same day, Duval Azolin, 25, was beaten while selling copies of *Libète* near the Marché Salomon.

On February 25, *Libète* reporter Emmanuel Eugene narrowly escaped arrest or kidnapping, while reporting at the Port-au-Prince cathedral on the mass for victims of the shipwrecked Neptune. Eugene was approached outside the cathedral by a man in civilian clothes, who asked Eugene to follow him. When he refused and attempted to enter the building, the man grabbed him by the collar. Eugene was able to escape into the cathedral, but later, another man in civilian clothes blocked his car when Eugene tried to leave, and ordered him to get into his vehicle. Eugene, luckily, was able to escape this abduction attempt.

The following are brief descriptions of additional press-related harassments and attacks.

- ◆ On June 24, uniformed police officers arrested six *Libète* vendors by the Champ de Mars in Port-au-Prince. Among them were Melorm Compère, Luckner Mandena, Jean Azolin, and Justin. The police burned their papers and took

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<sup>49</sup> Interview, Port-au-Prince, March 9, 1993.

<sup>50</sup> Interview, Port-au-Prince, February 9, 1993.

<sup>51</sup> Due to intensified repression against its staff, *Libète* suspended publication in October 1993.

their money. Five were taken to an Anti-gang Service office, where they were badly beaten. They were all freed several hours later.<sup>52</sup>

- ◆ On July 3 in Mirebalais in the Central Plateau soldiers arrested a peasant in possession of *Libète*. He was taken to the Mirebalais barracks, and released several hours later.<sup>53</sup>
- ◆ On June 29, then *de facto* Minister of Information, André Calixte, summoned Associated Press reporters and the local Agence Haïtienne de Presse. He reprimanded them for anti-military bias in their reporting of a June 27 event, where churchgoers were beaten by soldiers and men in civilian clothes.<sup>54</sup>
- ◆ Clarens Renois, news director for the independent Radio Metropole, was summoned to army headquarters on July 29. He was forced to wait for five hours and then told to return the next day. After waiting four hours the next day, he was seen by a low ranking officer who reprimanded him for reading an Agence France Presse story that mentioned the possibility of the resignation of Police Chief Michel François. Renois was initially told to return the next day, but his summons was later dismissed.
- ◆ On July 2, Claudy Vilmé, reporter and photographer for the French-language daily, the *Nouvelliste*, was arrested in Port-au-Prince while taking a photo of soldiers taking money at a gas pump during the period of rationing. Vilmé was seized by five civilians driving in a pick-up with military license plates. "The men beat me and forced me to lie down in their pick-up truck with their feet on me. They brought me to Fort Dimanche where they tortured me." The men placed Vilmé in a tiny three-sided cell in which they beat him from behind. "I lost consciousness twice so they threw cold water on my face to revive me. They accused me of giving false information and kicked me, saying 'Lavalas journalist.' Finally...they released me."<sup>55</sup>

## VII. VIOLENCE LEADING UP TO ARISTIDE'S SCHEDULED RETURN, OCTOBER 30, 1993

In the weeks leading up to October 30, 1993 — the deadline set by the Governors Island agreement for Aristide's return to Haiti — paramilitary groups, such as FRAPH, increasingly claimed the streets of Port-au-Prince, acting with the blessing and cooperation of the army. Although the greatest violence occurred in the capital, towns and villages throughout the country experienced a striking rise in repression. In addition to the shocking assassinations of Aristide supporter Antoine Izméry (on September 11) and Justice Minister Guy Malary (October 14), as described in Section V, many other serious human rights violations were committed by the army and its supporters during this period.

### Three Killed at the Reinstatement of Mayor Evans Paul

Armed civilians killed at least three people and badly wounded many others during the September 8, 1993 ceremony to reinstate Evans Paul as mayor of Port-au-Prince. The event was a turning point in the Haitian crisis, revealing the lengths to which the military would go to prevent a popularly elected leader from resuming office, and providing an inkling of what would later become only too clear — that the army had no intention of allowing Aristide to return and would not respect the Governors Island agreement.

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<sup>52</sup> Agence Haïtienne de Presse, "182 Resume de Nouvelles Nationales, 21-27 June, 1993."

<sup>53</sup> UN Secretary-General, *Situation*, October 25, 1993.

<sup>54</sup> Interview with Venel Remarais, Director of the Haitian Press Agency (*Agence Haïtienne de Presse*), June 29, 1993.

<sup>55</sup> Vilmé's report of being jailed at Fort Dimanche is one of several recent testimonies indicating that the infamous torture center, closed in 1990, is once more being used by the military. Interview, Port-au-Prince, July 16, 1993.

When Mayor Paul announced on September 2 his intentions to resume office, gun toting strongmen seized and occupied city hall. Attachés brazenly told local Radio Metropole that they did not recognize Malval as prime minister or Evans Paul as mayor. If the two tried to enter city hall, one man told a reporter, "they will be corpses."

Until half an hour before the scheduled ceremony over 200 armed civilian attachés continued to occupy city hall. Finally, at 11:40 A.M., about thirty uniformed police escorted the occupiers from the building allowing Paul, Prime Minister Robert Malval, members of his government, and foreign diplomats to enter.

During the brief ceremony inside city hall, violence began outside. Armed men began beating Paul supporters, as well as journalists, street vendors, and other bystanders. The crowd was violently dispersed by civilians wielding large sticks, knives, and guns. At least three people — Cléber Rivage, Edris Bayard, and Lévius Brunis — were killed and eighteen wounded, while uniformed police stood by and did nothing.

Among the wounded was thirty-three-year-old Bellony Jeannot, who was slashed across the stomach by a knife-wielding man approximately fifty-years-old. Jeannot described the scene:

When the attachés took the building hostage, I was standing outside, across the street. They were watching us. I was with a whole crowd of people. At about noon, when the mayor appeared, we all began to applaud. That's when the shooting started. I saw people who appeared to be shot fall to the ground....Someone near me hit me on my right temple with his fist. Then a guy standing right behind me on my right side pulled out a knife and slit my stomach. My whole insides seemed to fall out. I had on a shirt which I used to keep everything from spilling over.<sup>56</sup>

Police, who remained on the scene as Mayor Paul and the other dignitaries left city hall in their cars, would not protect journalists inside the building. Radio Tropic-FM reporter Emmanuel Laurent was beaten by armed men, who yelled curses at the journalists, blaming them for selling out the country.

The police also proved helpless in guaranteeing the safety of government personnel leaving the scene. Armed men assaulted many of the cars, and the new Minister of Information, Hervé Denis, was wounded in the head by glass shards when rioters attacked his car, shattering the windshield. One of his bodyguards was also wounded.

Not long after Paul left city hall, armed civilians retook the building. The mayor has asked Police Chief Michel François to rid the premises of the attachés and provide police security, but as of the publication of this report, they remain entrenched.<sup>57</sup>

The International Civilian Mission described the preliminary report prepared by the public prosecutor (*commissaire de gouvernement*) as identifying some of the armed men as active members of the armed forces. The prosecutor resigned, however, and the final report was never issued.

### **Army-supported Attachés Thwart Malval Government**

Throughout September and October, members of the Malval government were similarly, if less dramatically, prevented from assuming office. In most cases, groups of aggressive, armed civilians would gather outside and often inside government buildings. Prime Minister Malval himself was forced to work at home for his entire tenure because the state-owned Villa D'Accueil where he proposed to establish his offices remained occupied by attachés. The newly

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<sup>56</sup> Interview, Port-au-Prince, September 21, 1993.

<sup>57</sup> In a September 22, 1993, letter to Police Chief Michel François, Mayor Paul asked the police to oust the group of violent individuals occupying his office and "place at the service of the mayor's office, as in the past, a detachment of police, in view toward assisting in reestablishing order and guaranteeing security ..." He also noted in this letter that the city hall annex had been taken over without his permission by FRAPH, which turned it into their headquarters.

appointed directors of state-owned television and radio were delayed for days from assuming their posts. After briefly exercising control in late September, they were ousted by armed supporters of a Duvalierist organization who took over the station's facilities on October 11.

On September 14 and 15, Finance Minister Marie Michelle Rey was forced to call on diplomats to escort her from her office because of crowds of armed men threatening her ministry. On September 16, demonstrators inside the Ministry of Foreign Affairs disrupted the installation of Malval's foreign minister, Claudette Werleigh, yelling "Down with Caputo" and noisily occupying rooms on the building's second floor. They chased reporters from the building with threats.

A band of men surged into the offices of the Superior Court of Audits and Administrative Disputes (*Cour Supérieure des Comptes et du Contentieux Administratif*) on October 4, pushed around and threatened newly-chosen court president, Duti Mackenzie, and forced him into a private jeep. They also threatened the court's vice president before letting both men go. On the same day, the Supreme Court chief appointed after the coup d'etat, Emile Jonassaint, defied Justice Minister Guy Malary's order that he retire and, instead, held ceremonies marking the reopening of the judicial calendar. The ceremonies were attended by General Raoul Cédras and other members of the high command and were protected by a strong police presence.

### **Mirebalais September Repression**

In Mirebalais, in the Central Plateau, soldiers beat up eight people and tried to arrest the town's deputy mayor after they found pro-Aristide leaflets in the town on September 13, 1993. According to Jean Elvé Tironé, 39, a coordinator of the Agricultural Workers Union of Savanette (*Syndicat des Travailleurs Agricoles de Savanette*, STAS), there was intermittent shooting throughout the day and night of September 16 in Mirebalais. Tironé said the military seized Mondesir Duplessy, Paulas Aceus, Camelo Ocessite, Roger Ocessite, Michelaire Mertilus, Mme. Porcelly Casseus, and a man known as Dieuseul. They beat them and forced them to wipe pro-Aristide graffiti from the town walls. Tironé himself escaped an attempted arrest by a group of soldiers led by Section Chief Kebreau Tezan of the Gascogne section, after which he went into hiding in the nearby fields and mountains. On September 18, he was walking to Carrefour Peligre to catch a bus to Port-au-Prince when he encountered two soldiers from the Mirebalais army post who recognized him and began to hit him on the head with the butts of their rifles. They continued to beat him all over his body with a baton, telling him with each blow that they would kill him before October 30. The soldiers stole US\$160 (2,000 gourdes) and most of his clothes, leaving him in his undershorts.<sup>58</sup>

Deputy Mayor Jean Clotaire Cénoble, 37, elected under the banner of the National Front for Change and Democracy (*Front National pour le Changement et la Démocratie*, FNCD) barely escaped arrest by a squad of soldiers led by the local commander, Lieutenant Placide Jolicoeur, on the morning of September 15. Cénoble stopped by a neighbor's house as soldiers surrounded his home, seeking to arrest him. He fled into the bush and the next day managed to escape to Port-au-Prince. Two days earlier, Section Chief Kebreau Tezan had fired his gun into the air in front of Cénoble's house.<sup>59</sup>

### **Assault on Jean-Claude Bajoux's House**

Jean-Claude Bajoux and the Ecumenical Center for Human Rights, which he directs, received threatening phone calls after he publicly denounced the National Museum for its exhibit honoring François Duvalier. (Bajoux lost many members of his immediate family to the Duvalier terror.)

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<sup>58</sup> They told Tironé that they weren't arresting him because they knew that the International Civilian Mission would set him free. According to Tironé and Cénoble, the Mission's practice of undertaking efforts to free people illegally arrested had led to a change in the military authorities' tactics: more frequent beatings without detention. Interview, Port-au-Prince, September 20, 1993.

<sup>59</sup> Interview, Port-au-Prince, September 20, 1993.

Three gun and machete toting assailants, one of whom appeared to be a teenager, jumped the gate to Bajeux's house in the Desprez neighborhood of Port-au-Prince on the night of October 4. Forcing their way into the house around 9:00 P.M., they demanded to know where Bajeux was. When the two household staff members refused to disclose his whereabouts, the intruders assaulted them. They kicked the watchman Farol down the stairs and beat the cook Jacqueline with the butts of their guns. The thugs tied their wrists and ankles with telephone cord and covered their faces with adhesive tape. When a neighbor passing by heard the noise and yelled, "What's going on in there?" the attackers shot him in the stomach. Before leaving, they stole a suitcase, filling it with Bajeux's personal effects. A French couple who lived upstairs in the house at the time were unharmed.

### **FRAPH Assault at Hotel Christopher**

In October, FRAPH called for demonstrations and general strikes to protest both the presence of the International Civilian Mission in Haiti and the mediation of Dante Caputo. On October 5, armed civilians arriving at a FRAPH press conference attacked a group of people leaving a meeting with Mayor Evans Paul and ransacked the parliamentary liaison office of the prime minister. The assault, witnessed by foreign reporters and members of the Mission, occurred on the grounds of the Hotel Christopher in Port-au-Prince, where FRAPH had gathered to announce a general strike.

More than 100 FRAPH supporters surrounded the liaison office where Paul had just concluded a meeting with local school principals. The armed civilians, some firing automatic weapons, broke into the building, ransacked it and illegally arrested forty-one people. Uniformed police who were present, the Mission reported, "made no attempt to control the conduct of the armed civilians and they themselves participated in the illegal arrests."<sup>60</sup> The forty-one detainees, including former Senator Wesner Emmanuel and his son, were forced from the building with their hands over their heads and taken to the Anti-gang Service police station in the same vehicles that had been used to transport supporters to the FRAPH press conference. Police accused the detainees of assault but released them without filing formal charges.

### **FRAPH General Strikes**

FRAPH leaders, in the October 5 press conference, called for a general strike to begin on October 7, stating they would use "any means whatsoever" to grind the country to a halt if the Malval government did not admit Duvalierists into the cabinet. They warned merchants and public transport drivers, in particular, to stay home.

By paralyzing the country with fear, the strike succeeded. A few courageous trade union and popular organization leaders spoke out on the radio in opposition to the strike, yet very few people dared to leave their homes. Many of those who did were met with intimidation and violence.

"On many occasions," the International Civilian Mission reported, "armed men assaulted shopkeepers, stallholders and passersby, and fired shots to spread panic among the population." In Carrefour, Mission observers were forced to withdraw from a site where armed men were inflicting beatings after they were threatened with automatic weapons. In Port-au-Prince, "throughout the day, police patrols were often observed escorting the armed civilians enforcing the strike and sometimes acting in concert with them from the same vehicles." In Jacmel and Gonaïves, "soldiers were seen assisting civilians in enforcing the strike."<sup>61</sup>

At the Petionville market, armed men fired their guns into the air and exploded tear gas to clear the market before noon. In other city markets, such as Poste Marchande, Carrefour Pean, Delmas 32, and Tete Boeuf, there were reports of intimidation. Local Radio Tropic-FM reported that twelve people were brought to the State University of Haiti Hospital with bullet wounds during the day of the strike.

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<sup>60</sup> UN Secretary-General, *Situation*, November 18, 1993.

<sup>61</sup> *Ibid.*

During a later strike on November 4-5, again initiated by FRAPH and another Duvalierist group, *Capois la Mort*, soldiers and armed civilians patrolled the streets of Port-au-Prince, enforcing the strike call. At the Marché Vallieres, vendors were beaten and their produce stalls overturned. In nearby Kenskoff, soldiers and armed civilians forced schools to close and dispersed merchants from the market, beating some of them. In Petionville, soldiers and attachés arrived at the market and ordered shoppers and vendors to leave.

On November 5, the driver of a motorcycle taxi was shot to death by an armed civilian who objected to his working that day. The man had been discussing the price of a fare on Ruelle Nazon when the attaché approached, asking whether he knew about the FRAPH strike. When the driver declared his need to work, the attaché shot him.<sup>62</sup>

### ***USS Harlan County***

FRAPH also organized the "demonstration" at the port in Port-au-Prince on October 11, the day the USS *Harlan County* was scheduled to unload its contingent of U.S. and Canadian military trainers. In a radio broadcast, FRAPH leader Emmanuel Constant urged all "patriotic Haitians" to go down to the waterfront to protest the military mission's arrival. The events at the port that day were reported throughout the world.

The gates to the wharf were kept closed by Port Security, and the *Harlan County* was prevented from docking by the presence of a freighter in the deep water berth. Gun-toting FRAPH demonstrators and attachés yelled insults at the scores of foreign journalists, and then violently assaulted them and the car of the U.S. chargé d'affaires. All this took place, according to International Civilian Mission monitors, "in the presence of a large number of uniformed police who did not intervene."<sup>63</sup>

### **Wave of Arrests in Belle Anse**

The military increased attacks against pro-Aristide activists in October in and around Belle Anse, a rural town on the southern coast near the border with the Dominican Republic. On the evening of October 21, 1993, Section Chief Oxilus Remy of Bodary, a section of Grand Gosier, fired his gun at the house of the Grand Gosier Deputy Mayor Leon Calixte, who fled.

The following night in Bodary, Remy and Corporal Dilrick arrested Ramil Joseph, a member of the Bodary section council (*Conseil d'Administration de la Section*, CASEC), accusing him of being pro-*Lavalas*. Joseph was badly beaten while in custody. Two other men, Benoit Belizaire, a member of the Peasant and Workers Organization of Terre Rouge (*Organisation des Paysans et Travailleurs de Terre Rouge*, OPTT) and Antonio Jocelyn, director of the chapel of Terre Rouge, were also arrested on the same night and taken to the Bodary military post. All of the men were beaten while in custody and forced to pay a bribe for their freedom.

An activist named Simon Medé fled his home when soldiers fired shots in front of his house and then forcibly entered. Soldiers and armed civilians fired on the residence of Gaston Tanis, justice of the peace, during the night of October 22. He and Robert Cassagnol, the substitute justice of the peace, who was accused of being close to President Aristide, fled Thiotte on October 27.<sup>64</sup> Several hundred people are reported to have fled the Belle Anse areas for the Dominican Republic in the wake of the crackdown.<sup>65</sup>

### **Attacks in Desarmes, Verrettes**

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<sup>62</sup> *Resistance et Democratie*, Volume 2, Number 20. *Resistance et Democratie* is an anonymously published bulletin, distributed by facsimile, containing information collected from Haitian human rights groups.

<sup>63</sup> UN Secretary-General, *Situation*, November 18, 1993.

<sup>64</sup> *Resistance et Democratie*, Volume 2, Number 20.

<sup>65</sup> Agence Haïtienne de Presse, 201 *Resumé de Nouvelles Nationales*, 1-7 Nov, 1993.

On October 30 in Verrettes in the Artibonite, Section Chief Nevers Jean-Baptiste, together with the section chief of Desarmes, the fourth communal section, and several deputies, organized a demonstration. During the march, the group killed one man, wounded several and damaged and looted six houses, including two houses of members of Women in Action of Desarmes (*Femmes en action de Desarmes*). The man killed, Barthélemy Albert, 47, was the husband of a member of Women in Action of Desarmes. They left a message for the woman stating that Aristide could take the place of her husband when he returns. Maxo, the brother of another member of the group, was blinded in one eye by the assailants. Members of Women in Action were forced to flee the area.<sup>66</sup>

### **Terror in Saut d'Eau**

Two section chiefs led a campaign of terror and intimidation in Saut d'Eau, near Mirebalais. On the morning of October 30, Section Chiefs Floran Thelice and Emile Exumé gathered eighty armed deputies and other followers, to demonstrate in the Coupe Mardigras hamlet of Saut d'Eau against Aristide and UN mediator Dante Caputo and in favor of FRAPH. The crowd looted and wrecked ten houses belonging to members of the Saut d'Eau Clear View Cooperative Peasant Group Federation (*Federasyon Gwoupman Peyizan Kombit Laveje Sodo*, FGPKLS) and beat and arrested as many as thirty people, according to diverse reports.

Among those assaulted and whose homes were destroyed by the military-directed thugs were Antoine Charles, 60, a health monitor and FGPKLS leader who was badly beaten on the head and midsection; Marie Jeune Cineus, who was beaten and given the *kalot marasa*; and Francine Poleston, 72, an FNCD member of the elected administrative council of the communal section.

Yvette Virgile was arrested, beaten and forced to pay US\$40 (500 gourdes) for her freedom. Luckner Pauleston was tied to a horse, which his assailants ordered to gallop, pulling him for a distance of several meters. Tertulien Georges was tied up and jailed for three days in Section Chief Thelice's house. Others arrested and mistreated included Bote Brunie, Denis Charles, Origène Dorilus, and Crisil Aurèle.<sup>67</sup>

### **Other October 30 Violence**

In Port-au-Prince, there was intermittent shooting throughout the days and nights as October 30 drew near. Armed civilians terrorized the residents of poor and working class neighborhoods, and bodies were left in the streets every morning. The remains of four young men were found on Boulevard Harry Truman in downtown Port-au-Prince on October 26. Two young men were assassinated in the St. Thèrese section of Petionville during the last week of October.<sup>68</sup>

On October 30, 1993, the mutilated corpse of Toto Gabriel was found near his home on the Hermann Pape block of 5th Avenue Bolosse, in Port-au-Prince. Gabriel's head and feet had been cut off and scattered. The leader of the local watch committee, Gros Marin, who is also Gabriel's cousin, was shot and wounded around 5:00 P.M. the previous evening when a squad of armed civilians entered the area firing their guns and seeking a man name Roosevelt, who they claimed to be pro-*Lavalas*. Gros Marin organized watch committee members to throw stones at the men, who left, only to return later that night, seizing Gabriel.<sup>69</sup>

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<sup>66</sup> *Resistance et Democratie*, Volume 2, Number 16.

<sup>67</sup> Interview, Port-au-Prince, November 1993; Agence Haïtienne de Presse, "201 Resumé de Nouvelles Nationales, 1-7 Novembre, 1993."

<sup>68</sup> *Resistance et Democratie*, Volume 2, Number 16.

<sup>69</sup> *Resistance et Democratie*, Volume 2, Numbers 15 and 16.

Two people were reportedly killed in Saint Marc on October 30 — a bread seller and the husband of a woman sought by the military because of her community activism.<sup>70</sup>

The homes of two parliamentarians sympathetic to Aristide were attacked on October 30. The home of Deputy Samuel Madistin of the Haitian Christian Democratic Party (*Parti Démocrate Chrétien Haïtien*, PDCH) was attacked in Estère, in the Artibonite, on October 30. Madistin's mother was injured by broken glass from a window shattered by bullets.<sup>71</sup> A group of armed civilians led by the section chief fired several rounds at Deputy Jean Mandenave's home in Plaisance in the north.<sup>72</sup>

Reporter Luc François's home in Jacmel was machine gunned on the evening of October 30 by armed civilians. François had worked as Jacmel correspondent for Radio Haïti-Inter until it shut down after the coup; the attack was said to be in retaliation for an article François wrote for the New York-based *Haïti Progrès*.<sup>73</sup>

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<sup>70</sup> *Resistance et Démocratie*, Volume 2, Number 16.

<sup>71</sup> *Resistance et Démocratie*, Volume 2, Number 21.

<sup>72</sup> *Resistance et Démocratie*, Volume 2, Numbers 23-24.

<sup>73</sup> Agence Haïtienne de Presse, 201 Résumé de Nouvelles Nationales, 1-7 Novembre, 1993.

## VIII. TERROR CONTINUES

The campaign of terror did not end on October 30. During the first two weeks of November, Port-au-Prince was the scene of almost constant gunfire. Much of this was celebratory by FRAPH and other armed civilian groups rejoicing in the failure of the plan to restore President Aristide, but was nonetheless terrifying to the general populace. A large number of assassinations, some clearly political and others with combined criminal and political motives, continued to occur in November and December.<sup>74</sup> The two dozen International Civilian Mission monitors who returned to Port-au-Prince in late January reported an alarming number of killings, disappearances and arbitrary arrests during the first months of 1994.

### **Persecution Intensifies in the Artibonite**

In early November in Perodin, the local section chief tortured and arrested several members of the Assembly of Peasants (RPP). Members of the RPP have been under severe pressure from Section Chief Edner Odeïde since the 1991 coup.

Four members of the RPP, Celor Josaphat, Previlus Eluina, Licalixte Jean Louinat, and Derilus Cleartune, were arrested by Odeïde and two armed men in civilian clothes on November 7 as they were walking toward Petite Rivière. They were tied back-to-back in pairs with rope and taken to the section chief's house, where some ten uniformed soldiers disparaged them for being pro-*Lavalas*, saying "You think your papa [Aristide] will come back, but he won't."

Some of the men's relatives followed them to the house where a soldier told them they'd have to pay US\$160 (2,000 gourdes) for their freedom. When they collected the money and handed it over to Odeïde, the section chief told them that only the military post in Petite Rivière had the authority to free the men. The four prisoners spent the day tied up on the floor of the section chief's house. Late in the evening, four soldiers got them up and ordered them to walk to Petite Rivière with them. Upon their arrival the next morning, Cleartune was able to escape as the soldiers stopped in the marketplace for a drink. At the army post in Petite Rivière, a corporal ordered the three remaining prisoners to lie down on their stomachs on the floor. Several soldiers kicked the men and beat them with their batons, relieving one another when they became tired. Several hours later, the three men were carried out and dumped on the ground behind the post. Celor Josaphat was left with a broken left arm, badly swollen buttocks, blurred vision and many bruises.

### **Rape in the St. Marc Prison**

Carmene Dormilus Benjamin was arrested by four men in civilian clothes driving a Peugeot pick-up on November 13, 1993, as she left the Cabaret office of Teleco, the state telephone company, north of Port-au-Prince. They took her to the army post at Arcahaie, then sent her to the prison in the army base in the larger town of St. Marc. At the St. Marc prison, she was placed in a cell holding both women and men, including a pregnant woman who had been badly beaten and an elderly man who appeared on the verge of death. She asked to be moved to another cell, and on November 14, a soldier granted her request, but then threatened to beat her or kill her if she did not submit to his sexual advances. After raping her, he returned her to her former cell in the morning. During her interrogation by the captain in charge of the base, soldiers slapped her three times and kicked her in the stomach, demanding that she reveal the whereabouts of her husband, René Sylveus Benjamin, a church worker. Her family was denied permission to visit her at the prison until she was freed on November 16, after paying US\$120 (1500 gourdes).<sup>75</sup>

### **Soldiers Sweep Gonaïves Shantytown**

Soldiers seeking Amio "Cubain" Metayer, a leader of the Raboteau community in Gonaïves, arrested the following youths from Raboteau in Port-au-Prince on November 20, 1993: Balaguer Metayer ("Chatte"), 17; Joseph Cius

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<sup>74</sup> Radio stations reported the killings of at least twenty-two people on November 12 and 13 in Port-au-Prince, including five money changers on the Rue Pavée on November 13, twelve people in the Poste Marchand section, and five in Cité Soleil.

<sup>75</sup> *Resistance et Democratie*, Volume 2, Numbers 23-24.

("Djobit"); Bertrand Dorismond; Pierre-Paul Dorismond; Dieujuste; "Abdale;" "Fritó;" "Ti Claude." The following day, Jean Claude Teophin, also of Gonaïves, was arrested right after leaving the U.S. refugee processing locale. Three others, including "Cubain," escaped capture. The detained youths had traveled to Port-au-Prince intending to apply for political asylum. All were taken to Gonaïves and jailed.

On November 21, several others were arrested separately in Gonaïves, including Sergot Metayer, Rosny Toussaint, "Pinikrit," (arrested at his mother's wake), Augustin Charitable, Senatus, Michel Fermilus, and Alourdes Metayer.

Some, if not all, of the detainees were beaten badly. "Chatte" was beaten on his head, back and buttocks. Augustin Charitable was reportedly beaten in the *djak* position. Alourdes Metayer was beaten so badly in the abdomen that she miscarried her baby. She was released on December 17 along with most of the others.

Jean Claude Teophin, also badly beaten, was not released until January 24, 1994. Seventeen-year-old "Chatte" remains in prison at the time of publication. His family has been unable to see him for fear of reprisal. They learned in a message he managed to smuggle out of the prison that his hands had been kept tied together for twenty-two days and that he was suffering from chronic head and stomach pains.<sup>76</sup>

A group of uniformed soldiers and attachés made a return sweep of the Raboteau neighborhood seeking Amio Metayer on December 19. In one courtyard (a cluster of houses) fifteen adults and fourteen minors, ages four to fifteen were beaten.<sup>77</sup> Victims of the assault reported that they were made to lie face down on the dirt floor for hours while soldiers beat them. The soldiers then carried out a house-to-house search during which they beat and mistreated residents, mostly women and children, and demanded information regarding the whereabouts of Metayer, firing their guns randomly in the neighborhood.

People seeking to escape from the assailants fled into the sea while the soldiers and armed civilians shot at them. Evalliére Bornelus reportedly drowned trying to escape the shooting, and Louisiana Jean, an elderly woman, died of shock during the raid. Many residents immediately left the neighborhood and have not returned since. A seamstress, interviewed by HRW/Americas and NCHR, was too afraid to return and recover her sewing machine so that she could work. Residents identified one of their assailants as a former neighborhood activist who is now a FRAPH leader.

### **Torture and Arbitrary Arrest in Les Cayes**

Christian Joseph, 25, was illegally arrested on December 1, 1993, and tortured in a house outside the southern city of Les Cayes. The Aristide supporter and member of a local organization called Open Eyes (*Lave Je*), went into hiding following the 1991 coup, returning to his home in December 1992. On February 12, 1993, Section Chief Leder Registre ordered two attachés to arrest Joseph. They beat him twenty-two times with a baton before freeing him when a family friend paid US\$12 (150 gourdes). The section chief, who accused Joseph of being responsible for distributing leaflets reading "Down with Leder Registre," told him to get out of town.

Joseph followed his advice, and did not return home until October 1993. On December 1 around 10:00 A.M., he was stopped while riding a bicycle to Les Cayes by a Toyota pickup carrying a uniformed soldier, Registre, and two men in civilian clothes. The soldier forced him into the vehicle, blindfolded him, and drove him to a house where he saw two other prisoners, both Lavalas supporters, who had been there for two days.

On the morning of December 2, one of his captors blindfolded him once more and took him out of the room. He kicked Joseph in the midsection, causing him to fall, and then stood on his back. Turning him over, the man then walked on Joseph's stomach. Joseph described the torture:

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<sup>76</sup> Interviews, Gonaïves, February 12, 1994.

<sup>77</sup> HRW/Americas and NCHR were also shown photographs of the injuries sustained by residents of this courtyard. Some victims interviewed still had visible signs of the beatings at the time of the interview. Interview, Gonaïves, February 12, 1994.

The next morning, the same man came into the room. He tied on the blindfold, forced me to lie down and tied my hands together. Several people beat me, walked on my stomach, kicked me in the neck, forced me to crawl on my stomach, forced me to stand up to give me the *kalot marasa*. I received two blows to the jaw with the butt of a gun and lost a tooth.<sup>78</sup>

Joseph was taken from the prison on the evening of December 6, blindfolded and put onto a vehicle. The blindfold was removed after they passed Les Cayes and he later managed to escape when the car broke down.

### **FRAPH Arson in Cité Soleil Kills at Least 36**

A devastating fire swept the shantytown of Cité Soleil on December 27, 1993. The deliberate setting of fires by armed men, who later prevented many residents from leaving the burning site, appeared to be in retaliation for the violent death of leading FRAPH member Issa Paul. Paul, the local FRAPH treasurer, proprietor of a funeral parlor, and Carnival band leader, was killed in the early hours of December 27 in unclear circumstances. FRAPH leader Emmanuel Constant, blaming Aristide supporters, told reporters that a mob had hacked off Paul's arms and set him on fire. This account has been questioned by many Haitians, who believe Paul may have been killed as part of a quarrel within FRAPH.

The attack on Cité Soleil was conducted by a large number of armed men. Carrying guns, grenades, and machetes, they entered the neighborhood, looked for specific persons and shot them on sight, doused the precarious one-room shacks with gasoline, set them alight, and fired their weapons into the air as the flames spread.

Although FRAPH leaders have denied responsibility for the massacre, victims interviewed reported that FRAPH members shot and killed some residents, while others perished in the fire, prevented from escaping by the arsonists, with the tacit support of uniformed police. During the fire, known FRAPH members beat and arrested several people under the eyes of the military. Police did not intervene to stop the carnage, nor did the fire department, which is under military control, make any effort to douse the flames. The Justice and Peace Commission reported that firefighters were turned back by armed men, who said "they didn't have any need for them yet."<sup>79</sup>

Devastated residents of this shantytown, where most houses are built of scraps of wood, corrugated metal and cardboard, lost everything in the fire. All that was left standing in some places were sections of roof and metal bed frames.<sup>80</sup>

Initial reports coming from the Center for Development and Health (*Centre de Developpement et de Santé*, CDS), a USAID-funded agency in Cité Soleil, said that no more than four people were killed and 250 families left homeless. A later health ministry report said that 860 homes were destroyed, leaving at least 5,000 without shelter. The Justice and Peace Commission reported the identities of 36 people killed during the incident, as well as 25 people disappeared or unaccounted for, and four injured. Investigations into the massacre are continuing, and another credible estimate put the number of people dead as high as 102.<sup>81</sup>

Those reported killed were: Vélius Joachim, 36, originally from Baradères; Estéve Jean, 60, from Baradères; Natasha Café, 6, from Jacmel; André Louis, 28, from Baradères; Katia Isnadère, 2; Jean-Robert Dagrín, 4; Francilia François, 43, from Jérémie; Macule Pierre, 22, from Jérémie; Lessage Trazil, 35, from Thomazeau; Yves Jean, 46, from Port-au-Prince; Léma Aley, 21, from Moron; Woodly Jean, 1, from Anse-à-Pitre; Yves Fils, 36, from Jacmel;

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<sup>78</sup> Interview, Port-au-Prince, February 7, 1994.

<sup>79</sup> Commission Archidiocésane Justice et Paix de Port-au-Prince, "27 Décembre 1993 à Cité Soleil: L'Horreur Portée à son Comble! Bilan Provisoire des Cas de Disparitions, de Morts et de Blessés," January 1994. Translated by NCHR.

<sup>80</sup> David Beard, "Stricken Slum has been site of 'civil war' since Aristide's ouster," Associated Press, December 28, 1993.

<sup>81</sup> Interview with residents, Port-au-Prince, February 11, 1994.

Venia Massé, 3, from Petite Rivière de l'Artibonite; Elina Joseph, 28, from Mirebalais; Darlène Jean-Baptiste, 8, from Thiotte; Manouchka Jean-Baptiste, 5, from Thiotte; Rodrigue Madichon, 41, from Lascahobas; Séjène Mardi, 72, from Foret des Pins; Apollon Alexandre, 30, from Anse d'Hainault; Jean Edmond, 40, from Anse-a-Pitre; Rosema Mondesir, 10, Adancia Constant, 80, of Jacmel; Mercini Velis, 23, from Les Cayes and his children James Velis, 1, and Mernize Velis, 3 months; Ena Raymond, 43, from Les Cayes, and her daughter, Claudie Raymond, 4; Justine Jean, 35, from Anse-a-Pitre, and her children Maniela Nelson, 4, and Barnave Neson, 2 1/2 months; Simon François, 15 months; Miliiana Colon, an adult from Thiotte; Gabriel Rabel, 25, from Anse-a-Pitre and his daughter Daniela Rabel, 2 months; and Darlene Claude, 3. (Almost all of the victims lived in the Soleil 15 or Soleil 17 sections of Cité Soleil.)

Vélius Joachim was shot to death by FRAPH members during the fire. According to his wife, Joachim was taken away blindfolded and shot dead as she was helping their four children escape the fire, which destroyed their house and all their possessions. The family had moved to Cité Soleil from another Port-au-Prince neighborhood, where they had been harassed by armed men. The harassment continued in Cité Soleil. Prior to the fire, armed men had come to their home in Cité Soleil five different times looking for Joachim.<sup>82</sup>

Estève Jean and his daughter Natasha Café, age 6, perished in the fire when armed men prevented them from escaping. Jean's widow told HRW/Americas-NCHR investigators that armed men in civilian dress and military uniforms encircled the area hours prior to the attack. They nailed doors shut, imprisoning people in their homes, threw gasoline and grenades to start the fire, and beat people back to prevent their escape. When asked why they did this she replied, "because they knew he was a *Lavalas*. In 1991 they shot him in the leg for having an Aristide poster. After that he couldn't work. We used to live in Bolosse, but after my husband was persecuted we moved to Cité Soleil."<sup>83</sup>

Ghislaine, a mother of five children, lost her house and belongings in the fire. Her husband had been in hiding for over a year, persecuted because of his work on the 1990 presidential elections. On May 21, 1992, six men in civilian dress armed with rifles came to the house looking for him. They forced the door open and beat her in the face with their guns. (She is still partially blind in one eye.) With this latest attack, she has been left homeless, with her five children dispersed among different relatives. When asked why she thought this had happened, she responded that it was in retaliation for the killing of Issa Paul, which had been attributed to Aristide supporters. "They said that first it would be the turn of the boys and men, and the turn of the girls and women was coming soon. They said that every day someone in Cité Soleil will be killed. And it has been that way."<sup>84</sup>

The Justice and Peace Commission also reported widespread corruption in the provision of emergency assistance to the victims, which was coordinated by the CDS, with support from USAID. Cards identifying victims eligible for assistance were being sold for US\$35-40 (400-500 gourdes). FRAPH offices in the stricken area, particularly Soleil 17, were preventing many real victims from registering with the CDS. Others, they reported, were afraid to approach the CDS for fear of being caught by FRAPH members in the area. Arson victims interviewed by HRW/Americas and the National Coalition for Haitian Refugees (NCHR) corroborated these reports.

### **Assassinations in Sarthe**

Heavily armed soldiers assassinated a group of young men in the early hours of February 3, 1994, in Sarthe near Carrefour Vincent, just north of Port-au-Prince. Uniformed troops and armed men in civilian dress projected tear gas into the house where the young men were meeting, forcing all inside to flee. As they exited the building, the soldiers opened fire, killing them. Six bodies were found inside the house, and forensic examination suggested they had been killed after surrender, when lying on the floor. The depression crater from a grenade detonated in the attack was

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<sup>82</sup> Interview, Port-au-Prince, February 11, 1994.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

noticeable inside the house and four pools of blood were discovered just outside. The six bodies found at the house and additional casualties of the attack encountered in neighboring streets, combined for a final death toll as high as fifteen.

The youths reportedly belonged to the Unity Organization to Combat the Misery of the Haitian People (*Oganisasyon Tet Ansamn pou Kombat Mize Pep Ayisyen*, OTAKAMPA) based in Cité Soleil. They had left Cité Soleil to escape the repression there, which intensified following the December 1993 fire.

Police from the Delmas 33 station told the International Civilian Mission, which denounced the attack, that the youths were part of a "terrorist and subversive organization" and that they had an argument among themselves over money.<sup>85</sup>

### **Killings Continue in Cité Soleil**

The president of a Cité Soleil political movement (*Alliance des Democratres Patriotes Revolutionnaires Haïtiens*) reported the killing of five young men around 10:00 P.M. on February 9, 1994, in Cité Soleil 17 and 19. A large number of soldiers and armed civilians he identified as local FRAPH members, came to the neighborhood in vehicles. They hacked with machetes and shot three of the young men in front of a neighboring house, then pursued the other two as they attempted to flee, killing them also. The three bodies found at the house were identified as Ti Nes Jean, Paul Daniel, and Philippe Antoine. All of the victims were members of the Lintheau Youth Group (*Kombit Jèn Linto*). After the killings, the witness helped cover the bodies, but no one removed them because the perpetrators kept circling the area. Pigs began to eat the bodies of the two that had tried to run away. The next evening, unidentified men arrived and removed the bodies.<sup>86</sup>

By mid-March, more than seventy cases of extrajudicial killings and suspicious deaths had been reported to the UN/OAS International Civilian Mission, following the return of a small contingent of observers to Port-au-Prince on January 31. In the first two weeks of March alone, the Mission was investigating twenty-one cases of extrajudicial killings and suspicious deaths in the capital; sixteen of these occurred in Cité Soleil.

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<sup>85</sup> Communiqué de Presse, International Civilian Mission in Haiti, OAS/UN, February, 9, 1994.

<sup>86</sup> Interview, Port-au-Prince, February 11, 1994.

## IX. INTERNATIONAL ACTORS

### U.S. Policy

"We're hemorrhaging credibility."

— Unnamed U.S. official following USS *Harlan County* withdrawal.

Instead of insisting that the protection of human rights of Haitians be a fundamental component of any political solution in Haiti, the Clinton administration deliberately ignored the issue of human rights throughout the Governors Island negotiations and after. In a demonstration of its willingness to set aside human rights in the hopes of achieving a quick political settlement, the Administration sacrificed accountability for those who committed human rights violations following the September 1991 coup, and supported an indiscriminate and inhumane policy of forcibly repatriating Haitians fleeing well-documented persecution. While the Administration took some actions against the *de facto* leaders following the collapse of the Governors Island Accord, those actions were undermined by its record of granting innumerable concessions to the human rights abusers in power in Port-au-Prince who chose to ignore the Accord's provisions. Now, with its credibility seriously undermined, the Administration is left with few options to facilitate the restoration of democracy in Haiti.

### *Governors Island Accord and Accountability*

The ill-fated Governors Island Accord was signed on July 3. It called for the resignation of General Cédras shortly before the return of President Aristide to Haiti on October 30, the lifting of UN and OAS sanctions, and the provision of more than \$1 billion in international assistance. After the conditions of the Accord were met, Haiti was also set to receive technical and military assistance to promote development and administrative, judicial and military reform, including the separation of the police from the army.

Perhaps the most controversial requirement of the Accord called for Aristide to issue an amnesty in accordance with the Haitian Constitution, which allows the president to accord amnesty for political crimes (crimes against the state), but not for common crimes (crimes against individuals). Aristide was under consistent pressure from UN Special Envoy Dante Caputo and Ambassador Lawrence Pezzullo, Special Envoy for President Clinton, to make concessions on the Haitian army's accountability for its crimes. Aristide acquiesced, but insisted correctly that the amnesty should cover only the crimes relating to overturning the constitutional order, not murders, disappearances and torture that had taken place since the coup.

As could be predicted, the amnesty proved to be a serious point of contention between Aristide and the *de facto* leaders. But, instead of siding with Aristide in a public, unequivocal way, the Administration consistently refused to state publicly its position on which crimes should be included in the amnesty or whether an amnesty law needed to be passed by the Haitian parliament. Privately, the Administration argued that a broad amnesty was necessary to satisfy the demands of the *de facto* rulers. In fact, during August and September, U.S. officials now acknowledge that they presented the Justice Minister and Prime Minister Malval with drafts of amnesty laws similar to those passed in other countries, some of which covered not just crimes against the state, but also serious human rights abuses against Haitians.

Although U.S. officials said that Justice Minister Guy Malary was working on an amnesty law when he was killed<sup>87</sup>, in an interview one day before his death, Malary discussed the amnesty question with NCHR and Washington Office on Latin America representatives, saying he considered Aristide's decree to be all that was necessary under the Haitian constitution. Although the parliamentary opposition might submit an amnesty law, the government had no intention of doing so.<sup>88</sup>

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<sup>87</sup> Interview, U.S. Embassy, Port-au-Prince, February 11, 1994.

<sup>88</sup> Interview with Justice Minister Malary, October 13, 1993.

After the USS *Harlan County* was turned away and General Cédras began actively pressing Parliament to vote a broader amnesty that would include human rights violations, the Administration refused to support the notion of accountability. Several Administration officials maintained that it was up to Haitians to decide whether to hold human rights violators accountable — even while those same abusive elements remained in control. By the time Haitian citizens would be in a position to support accountability, the broad amnesty under consideration would have been law and those responsible for abuses protected from prosecution. In the end, the only clear signal sent by the U.S.'s public silence and private support for a broader amnesty was that the *de facto* leaders would not be held accountable for the violations they had committed against Haitian citizens.

#### *U.S. Military Assistance*

In its eagerness to persuade the Haitian security forces to adhere to their promises under the Accord, the U.S. proposed a premature military assistance package including \$1.25 million under the International Military Education and Training Program (IMET), nearly \$1.2 million in Foreign Military Financing (FMF) for military professionalization; and \$4 million in Economic Support Funds for police professionalization through the International Criminal Investigations Training Assistance Program (ICITAP). Congress conditioned U.S. aid by prohibiting military assistance or training in which there would be participation by any member of the Haitian military involved in drug trafficking or human rights abuses. Even though U.S. Ambassador William Swing promised that trainees in the IMET program would be screened, at the time of the breakdown in the implementation of the Accord, the Administration had failed to put forward a realistic plan to ensure that this assistance would not end up in the hands of human rights abusers.

The Pentagon's commitment to screening out human rights abusers and its assurances that leaders of the coup would not receive U.S. training recently has been called into question following the release of Pentagon documents showing that at least ten Haitian army officers continued to receive IMET training in the U.S. after the overthrow of Aristide on September 30, 1991. The internal Pentagon documents contradict statements made by the Defense Department denying that training continued after the coup. According to reports, some of the trainees began their programs after the coup took place, while others were allowed to complete their training that had begun before the coup. The disclosure of the information led Rep. Joseph Kennedy (D-MA) to assert, "The United States should never condemn the abuse of democracy and human rights and then turn around and train the abusers on our own soil."<sup>89</sup>

In September, the UN Security Council approved a U.S.-sponsored resolution to send 567 UN police monitors and 700 military personnel to Haiti, including some sixty military trainers. These forces were to include about 500 U.S. troops. After concerns were raised about the lack of adequate human rights screening procedures for trainees, Ambassador Swing announced that the U.S. would no longer be training an interim police force. Instead, UN police monitors and trainers (not including U.S. participants) would conduct the training and, with the Malval government, would be responsible for screening out human rights abusers. The training plan was scrapped once the Accord collapsed, yet as recently as mid-December, there were reports that the "four friends" (the United States, France, Canada and Venezuela) would attempt to convince the Haitian armed forces to allow American and other military personnel to establish a training mission in Haiti.<sup>90</sup> The four friends reportedly also were pursuing the reintroduction of police trainers from Canada, France and other French-speaking countries. In addition, U.S. personnel with the ICITAP program will soon return to Haiti for consultations with members of the Aristide government.<sup>91</sup>

#### *Breakdown of the Governors Island Accord*

From the outset, the U.S. and the international community discounted the mounting evidence that the military would not honor its obligations under the agreement. UN observers and human rights activists warned US officials that violence

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<sup>89</sup> Paul Quinn-Judge, "Haitians Trained after Coup," *The Boston Globe*, December 6, 1993.

<sup>90</sup> John Goshko, "Four Countries to Press Plan for Training Mission in Haiti," *The Washington Post*, December 17, 1993.

<sup>91</sup> Interview with U.S. officials, Port-au-Prince, February 11, 1994.

by the military had escalated dramatically, yet those voicing caution were disregarded because they had not grasped the "big picture."<sup>92</sup> Instead, in order to reward the *de facto* leaders for their anticipated cooperation, the UN embargo was lifted in August, assets were unfrozen and visas reinstated.

As the Clinton administration was finalizing plans for the deployment of U.S. military trainers and observers to Haiti, a debate over U.S. involvement in humanitarian interventions was unfolding after American troops suffered fatalities in Somalia. Vocal Republicans were highly critical of the Administration's plan for protecting the U.S. trainers destined for Haiti, as was Defense Secretary Les Aspin. Despite a climate of uncertainty about the mission as planned, the White House resolved or overruled the Defense Department's objections, and the military trainers were sent to Port-au-Prince.

Implementation of the Governors Island Accord came to an abrupt end on October 11, when a gang of armed paramilitary "attachés" and FRAPH members assisted by Haitian security forces, initiated a noisy protest at the Port-au-Prince dock as the USS *Harlan County* approached, preventing the ship carrying U.S. and Canadian military trainers and observers from docking. Confronted by the loud mob, the Administration quickly ordered the withdrawal of the ship, without consulting with other nations' diplomats or heeding the advice of some observers who favored immediate pressure on the Haitian leaders to allow the *Harlan County* to dock, rather than a total retreat. The ship's withdrawal prompted the Special UN Envoy Dante Caputo to complain that, "The excuse for the pullout was that demonstration, and that is the right word, excuse....There were 200 people screaming at the port. Early this year, we were confronted with 3,000 people when we first came here, many of them armed, but we went ahead anyway."<sup>93</sup>

In any case, the *Harlan County's* withdrawal precipitated a total withdrawal of international observers and resulted in an enormous victory for the Haitian military. The first to announce their departure were the Canadians, who began evacuating their troops on October 14.<sup>94</sup> As described elsewhere, UN/OAS International Civilian Mission (MICIVIH) personnel were recalled from rural areas to Port-au-Prince out of fear for their safety following an escalation in attacks. The day after the Canadians began their withdrawal, the UN decided to begin evacuation of the MICIVIH staff to the Dominican Republic, leaving Haitians who had cooperated with the mission in increased danger. Most importantly, the *Harlan County's* retreat emboldened the *de facto* leaders, who let deadlines agreed to in the accord pass without action and who demanded new concessions from Aristide.

In the weeks leading up to the planned arrival of the *Harlan County*, and even after the ship was turned away, U.S. officials repeatedly stated their firm belief that the Haitian military would uphold its part of the accord. During his visit to Port-au-Prince in late September, Assistant Secretary of State for Inter-American Affairs Alexander Watson had told reporters that the army leaders would carry out the requirements of the accord "to the letter" and that the military leaders "are committed to meeting those responsibilities."<sup>95</sup> Two days after the *Harlan County* was turned away, Col. James G. Pulley, the U.S. Army officer who was commander of the small UN military contingent already in Haiti at the time of the *Harlan County* pullback, declared, "I have confidence in the armed forces of Haiti."<sup>96</sup> This comment prompted an unnamed diplomat to state, "For weeks the United States wanted no mention of the violence here....Now the Haitian Army and police block an American ship from docking...and all they can come up with is a statement of confidence in

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<sup>92</sup> George Black and Robert O. Weiner, "A 'Process' Blind to the Cost in Blood," *Los Angeles Times*, October 19, 1993.

<sup>93</sup> Howard French, "U.S. Advisor Meets Haitian But Sees No Breakthrough," *The New York Times*, October 16, 1994.

<sup>94</sup> The same day, Justice Minister Guy Malary was assassinated.

<sup>95</sup> "U.S. Insists Plan to Restore Aristide Remains on Track," *The Miami Herald*, September 22, 1993.

<sup>96</sup> Howard W. French, "U.S. Move Angers Diplomats in Haiti," *The New York Times*, October 14, 1993.

Haiti's officers."<sup>97</sup> The U.S.' unwarranted trust in the Haitian armed forces' good intentions, and its belief that the military would serve as a guarantor of stability, resulted in predictable failure.

The Administration's response to the Haitian *de facto* leaders' refusal to live up to the Accord was again disappointing. The Administration immediately pushed for the UN to reimpose an oil and arms embargo against Haiti and it reinstated a block on the financial assets of the *de facto* authorities.<sup>98</sup> At the same time, the Administration began to pressure Aristide to broaden his cabinet to include conservatives and to enact a blanket amnesty, thereby repeating its failed strategy of additional concessions to the *de facto* leaders. Although the Administration strenuously denied reports that they were pushing for the inclusion of "anti-democratic" forces in the cabinet, the symbolism of the pressure on Aristide to compromise after the military's many acts of defiance was not lost on the *de facto* leaders. By December, Special Envoy Pezzullo had declared that there needed to be a national dialogue "with major forces in the political realm, the labor unions, the military, the private sector...."<sup>99</sup> Pezzullo also stated that officers who had not engaged in repression should be consulted on forming a new coalition government, thereby continuing the Administration's search for "moderates" within the Haitian military who could be cultivated as U.S. allies.

### *Refugee Policy*

Even though political violence in Haiti had escalated enough to prevent U.S. and Canadian military trainers from landing at the Port-au-Prince dock and to force the withdrawal of UN/OAS human rights monitors, the U.S. continued to repatriate all refugees attempting to flee Haiti, without prior screening for asylum-seekers with legitimate claims. The Administration, which remained fearful of a surge of Haitian boat people landing in Florida, announced that it would continue to rely upon its in-country processing (ICP) program in Haiti to consider Haitians' applications for political asylum in the U.S. The ICP program has been criticized by Human Rights Watch/Americas, the National Coalition for Haitian Refugees, and others as seriously flawed and inappropriately applied in Haiti. In no other instance is ICP seen as a viable substitute for the internationally recognized right to flee one's country and seek refuge. The program is incapable of protecting applicants and securing the information supplied by them in support of their asylum claims. Numerous cases of persecution of applicants to the program have been documented.<sup>100</sup> Moreover, case adjudication is biased against applicants and the State Department's consistently inaccurate assessment of the human rights situation is infused into the program at all levels, resulting in unwarranted denials.

In addition to violating international law regarding the prohibition of *refoulement*,<sup>101</sup> as well as numerous other principles of refugee protection, the U.S. policy of forcibly repatriating Haitian refugees undermines the Administration's ability to condemn human rights violations committed by the military and its supporters because it must justify its repatriation policy by contending that those fleeing are not suffering from systematic persecution. The violators, therefore, avoid forceful condemnation by the U.S. The result is a tacit agreement between the U.S. and the

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<sup>97</sup> Ibid.

<sup>98</sup> The list of individuals originally targeted was limited, but has since been expanded to include approximately 564 individuals, most of them officers. The expanded list has not been made public.

<sup>99</sup> "Clinton Advisor Urges Sharing Power with Some in Haitian Military," *The Miami Herald*, December 8, 1993.

<sup>100</sup> For example, Pierre Michel Guillaume, an active Aristide supporter from Les Cayes, was abducted on September 27 in Port-au-Prince. He was seized by men in a white pick-up without license plates as he left the U.S. refugee processing office, according to the International Civilian Mission. Guillaume later reappeared and is currently in exile in the U.S., according to U.S. embassy officials.

<sup>101</sup> Article 33 of the 1951 Convention on the Status of Refugees provides:

No Contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

The U.S. is not a party to the 1951 Convention, but has signed and ratified its 1967 Protocol. In any event, the Convention's non-*refoulement* clause is declaratory of customary international law and therefore binding on the U.S., and for that reason it has been incorporated into U.S. domestic law, including the Refugee Act of 1980.

*de facto* leaders, that the refugees do not warrant attention or protection as long as each side benefits by ignoring their plight.

On February 8, President Aristide rightly ended his year-long silence on the Clinton administration's forcible repatriation policy, describing its implementation as a "floating Berlin Wall." He announced that he was reconsidering a 1981 refugee agreement between Haiti (then ruled by Jean-Claude Duvalier) and the U.S. that permits U.S. officials to board vessels from Haiti to search for illegal immigrants, but also specifically provides that the U.S. will not return individuals who might have legitimate claims of political persecution to Haiti. The U.S. reacted to Aristide's statements by criticizing Aristide for raising the issue. The State Department spokesman remarked that, "...threatening to abrogate that agreement amounts in effect to encouraging people to leave Haiti in a way that could only result in deaths at sea, which is presumably something that President Aristide would wish to avoid. So we find his remarks quite mystifying."<sup>102</sup> The spokesman explained, incorrectly, that the U.S.'s forcible repatriation policy is not a violation of international law because of the 1981 agreement, and commented that those who believe that it is a violation of international law have a "peculiar view."<sup>103</sup> In fact, as stated above, with or without the bilateral agreement, the U.S.'s policy of forcibly returning refugees violates customary international law prohibiting *refoulement*.

The Administration struggled to defend its repatriation policy. At a December 8 briefing by Assistant Secretary of State for Human Rights and Humanitarian Affairs John Shattuck, he replied to a reporter's question about the refugee policy by stating, "In the future when that restoration of democracy occurs, the policy of interdiction and the grave difficulties that I think that poses for issues of asylum, will no longer be the applicable policy."<sup>104</sup> Two days later, Shattuck was asked whether the U.S. policy conformed with either the spirit or letter of the International Covenant on Civil and Political Rights, to which he responded, "The U.S. is committed to considering the asylum applications of all who make them in Haiti, and it — to the extent that that commitment is fulfilled, and I believe it is, then the United States is acting consistent with the covenant in question. But this is not an easy issue and it is not an issue that will be resolved until democracy returns to Haiti."<sup>105</sup>

Just days later, following a trip to Haiti, Shattuck stated, "I'm going back with a view that a policy review is necessary."<sup>106</sup> The following day, the State Department spokesman declared there was no plan to change the policy. Shattuck himself was reportedly reprimanded by Peter Tarnoff, Under Secretary of State for Political Affairs. One State Department official stated that Shattuck's comments were, "completely wrong and outrageous....It was a completely rogue statement."<sup>107</sup> Yet Shattuck's sentiments are shared by other Administration officials who have told human rights activists that they are uncomfortable with the policy or do not support it.

In congressional testimony on February 1, Shattuck returned to the Administration's publicly stated policy by reporting that the in-country processing program had been reviewed and improved, particularly in rural areas. Shattuck concluded that "there is a significant effort of outreach that's being made by the United States to assure that all those who have a claim to refugee status in country can be — can get that claim met."<sup>108</sup>

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<sup>102</sup> As transcribed by Federal News Service, February 9, 1994.

<sup>103</sup> *Ibid.*

<sup>104</sup> As transcribed by Federal News Service, December 8, 1993.

<sup>105</sup> As transcribed by Federal News Service, December 10, 1993.

<sup>106</sup> "U.S. Aide to Seek New Policy on Fleeing Haitians," *The New York Times*, December 15, 1993.

<sup>107</sup> Steven A. Holmes, "Rebuking Aide, U.S. Says Haiti Policy Stands," *The New York Times*, December 16, 1993.

<sup>108</sup> Assistant Secretary John Shattuck's testimony before the Subcommittee on International Security, International Organizations, and Human Rights of the House Foreign Affairs Committee, on February 1, 1994, as transcribed by Federal News Service.

During a fact-finding trip to Haiti in mid-February, however, HRW/Americas and NCHR found that the ICP program was even more restrictive and unresponsive to the severity of the refugee crisis. Moreover, forced repatriations to the Port-au-Prince pier have become increasingly dangerous. Since the *Harlan County's* October retreat, human rights monitors and journalists have been barred from the dock. In addition, repatriates identified as "high priority" for expedited asylum interviews by U.S. Embassy personnel prior to disembarkation have been arrested at the pier and detained for several days.

### *Role of the Central Intelligence Agency*

The role of the Central Intelligence Agency (CIA) in Haiti received a great deal of attention during the last few months of 1993. A CIA analyst's congressional briefing, which was highly-critical of Aristide, and the revelation that the CIA-created Haitian National Intelligence Service (*Service d'Intelligence Nationale*, SIN), was engaged in political terrorism and drug trafficking, raised serious questions about the quality of information provided by the CIA to policy-makers, as well as the complicity of the U.S. agency in human rights abuses in Haiti.

A week after the USS *Harlan County* was turned away from the Port-au-Prince dock, Sen. Jesse Helms (R-NC) requested and received a briefing by the CIA's chief Latin American analyst Brian Latell about Aristide's background. At the briefing, which was reportedly attended by a dozen Senators, Latell stated that Aristide had been hospitalized with psychological problems, had been implicated in the murder of political opponents, and had incited mob violence.

While Human Rights Watch/Americas and NCHR have criticized Aristide for two speeches he made that seemed to justify "popular justice" or mob violence, we found no evidence that he had incited actual acts of violence. We have found allegations that Aristide ordered the murders of political opponents to be unfounded. We have also noted that during his brief tenure as president, human rights observance in Haiti improved considerably. Even though the human rights record of Aristide should be discussed, abuses that may be attributed to him pale in comparison to his successors now controlling Haiti, yet those records were not a subject of a CIA briefing during this volatile period. More than a month later, the *Miami Herald* reported that the allegations of Aristide's hospitalization were false.<sup>109</sup> Even though much of Latell's information was false or disputable, there was no official rebuke, such as the one Assistant Secretary Shattuck reportedly received for stating his opinion on the refugee issue.

When questioned about whether, in light of the CIA reports about Aristide, the Administration believed Aristide was capable of governing, the State Department spokesman replied that it was up to Haitians to make "those types of judgments." He went on to state that the U.S. evaluates foreign leaders differently at different times, "and that's stuff we keep confidential."<sup>110</sup> In this case, however, the CIA's evaluation was not kept secret, and it has been argued that the Haitian military was aware of growing apprehension in the U.S. about Aristide, and that those doubts strengthened its resolve to hold on to power. At the very least, the congressional debate over Aristide's human rights record — a debate that should have taken place long before, but certainly not during, this period of rising tensions both in Port-au-Prince and Washington — and discussions about his mental health resulted in a lengthy diversion from the human rights crisis that was unfolding in Haiti.

In November, information about the activities of the CIA-created intelligence unit, SIN, which reportedly operated until just after the September 1991 coup, began to surface. The SIN reportedly spent millions of dollars provided by the U.S. for training and equipment, yet provided little narcotics intelligence, which was its intended purpose. Instead, senior members of the SIN reportedly interrogated and tortured political activists, raising serious questions about U.S. complicity in human rights violations. U.S. funding for some of the individuals committing those abuses, while Washington was ostensibly condemning violations, sent yet another mixed signal to Haitian leaders about U.S. dedication to human rights. Three SIN leaders — Col. Ernst Prudhomme, Col. Diderot Sylvain and Col. Leopold

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<sup>109</sup> Christopher Marquis, "CIA Report on Aristide was False," *The Miami Herald*, December 2, 1993.

<sup>110</sup> As transcribed by Federal News Service, November 3, 1993.

Clerjeune — were included on the U.S. Treasury Department's list of targeted frozen assets beginning on November 1.<sup>111</sup>

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<sup>111</sup> "C.I.A. Formed Haitian Unit Later Tied to Narcotics Trade," *The New York Times*, November 14, 1993.

# EXHIBIT

4

**DECLARATION OF ROBERT E. MAGUIRE.**

I, Robert E. Maguire declare as follows:

1. I am the Director of the Trinity University Haiti Program in Washington, DC and the Chair of the University's International Affairs Program. I have a Doctorate in Geography from McGill University and a Masters Degree in Latin American and Caribbean Studies from the University of Florida. I have focused my research and career on all aspects of Haitian society, including its politics, economy, and foreign policy. From 1979 to 1999, I worked for the Inter-American Foundation, a small U.S. government agency mandated by Congress to provide development assistance to local organizations in Latin America and the Caribbean, as a resident expert and officer for programs in the Caribbean, including Haiti. In 2000, I was sent by the Foundation to the State Department to become the Special Projects Manager for Haiti in the Bureau of Western Hemisphere Affairs. From my professional experience and research, I am very well acquainted with Haitian political and social history.

2. I have visited Haiti over one hundred times since 1979, and have published extensively on many topics concerning Haiti, including Haitian armed forces and paramilitary organizations. I have spent a significant amount of time in Haiti, and continue to monitor events going on there. My most recent visit was in March, 2007.

3. I was qualified as an expert witness in contemporary Haitian society and Haitian political and social history during an August 29, 2006 hearing in front of Judge Sidney H. Stein of the Southern District of New York U.S. District Court during which I testified to my knowledge of Emmanuel "Toto" Constant, his leadership and command over the death squad known as FRAPH (the Revolutionary Front for the Advancement

and Progress of Haiti) and his responsibility for human rights abuses in Haiti. I also testified to the lack of legal redress available in Haiti for victims of abuses committed by members of FRAPH. Attached as Exhibit 1 is a true and correct copy of my testimony at the hearing.

4. As the founder, leader and head of FRAPH, Mr. Constant used methods of terror and intimidation in attempts to control and eliminate the pro-democracy movement in Haiti, including the use of rape and other torture, beatings, arson, imprisonment and murder. The meaning in the Creole language of the word FRAPH – “a sharp blow or punch” – was consistent with the organization’s modus operandi. Hence, the acronym chosen by Mr. Constant to represent his organization was not coincidental.

5. Presently, there is no functioning legal system in Haiti that can be relied upon to prosecute Mr. Constant for human rights abuses or any other crimes. The Haitian judiciary lacks independence and is plagued by corruption. Judicial officials are routinely harassed and, on occasion, physically intimidated by accused criminals and their representatives. Currently, no perpetrators of human rights abuses have been successfully held to account by the Haitian court system.

#### **BACKGROUND INFORMATION ON EMMANUEL CONSTANT**

6. Mr. Constant was greatly influenced by his early connection to the Duvalier dictatorship. From 1957 until 1986, Francois “Papa Doc” Duvalier and his son Jean-Claude “Baby Doc” Duvalier were dictators in Haiti. General Gerard Constant, Mr. Constant’s father, served as Francois Duvalier’s chief-of-staff. Consistent with his father’s position, Mr. Constant received an elite education and was awarded an important post in the Haitian Embassy in Ottawa, Canada upon graduation. Later, the patronage

accorded to Mr. Constant elevated him to a post at the Haitian Mission to the UN. Mr. Constant clearly benefited from the support of the Duvalier dictators.

7. In 1986, this dictatorship fell, and Jean-Claude Duvalier and his entourage fled Haiti. From 1986 until 1990, there was a great deal of conflict in Haiti between those who wished to maintain the status quo of the dictatorship, and those who wished to move away from the dictatorship into representative, elected government. Mr. Constant fell into the former group.

8. In December of 1990, there was a national election in Haiti. A reform candidate, Jean-Bertrand Aristide, was elected president of Haiti. Mr. Constant and others who benefited from the dictatorship were fearful that Mr. Aristide and his elected government would take away their privilege, power, and access to public resources. When the elected government assumed office, Mr. Constant was out of work for the first time in his life.

9. In September of 1991, there was a violent coup d'etat against President Aristide and his government. From this time until October of 1994 Haiti was plunged into a period of harsh rule by a de facto military government. After the elected government was overthrown, Mr. Constant regained a prestigious government position when he was appointed as the director of the government welfare office by well-placed friends in the Haitian army. From this position, Mr. Constant created a national network of so-called welfare offices around the country, which served as surveillance mechanisms for the de facto authorities and that laid the foundation for him to ultimately create FRAPH as a national organization.

## EMMANUEL CONSTANT LEADS CAMPAIGN OF VIOLENCE

10. The goal of FRAPH was to support the de facto military regime and make sure the President Aristide would never return to the country. FRAPH's organization and operation was closely modeled on a paramilitary organization created by Francois Duvalier - the Ton Ton Macoute - that terrorized Haitians and monitored them to make sure they didn't oppose the dictatorship.

11. Initially after the coup, soldiers were visibly seen in the streets of Haiti engaged in violent acts. This practice undermined the military government's attempt to legitimize itself. To continue these acts without de-legitimizing the government, the government increasingly relied on non-uniformed actors to do its dirty work. Initially, these actors were referred to as "attachés." Although loosely organized, they often worked in tandem with the police, and to some extent, the army. For clarity, it should be noted that Haiti's police were a corps within the structure of the Haitian Armed Forces. As FRAPH emerged as a structured force with close ties to the military, it began to eclipse the attachés. In fact, communications between employees of the U.S. Defense Department and of the CIA confirmed FRAPH's growing importance as a paramilitary force with links directly to top-ranking military leaders.

12. FRAPH was characterized as a terrorist group by U.S. government officials. FRAPH, like most terrorist groups, depended on being somewhat unidentifiable, and therefore didn't provide uniforms for its members. However, there were ways that members identified themselves - to each other and to the public they sought to intimidate. Members would wear or carry red and black items - symbolizing their alliance with the Duvalier dictatorship, and they would give the infamous FRAPH

salute. That salute, consistent with FRAPH's meaning in Creole, was a fist in an open hand, signaling a severe blow or punch. Mr. Constant was seen on multiple occasions giving the FRAPH salute.

13. FRAPH had a clearly defined internal and national organizational structure. It was led by a central committee with three to five self-appointed members. The central committee coordinated activities with the armed forces, issued membership cards for people who wanted to join FRAPH, established and inspected the departmental regional offices, and communicated the organization's activities and objectives. At first, Mr. Constant was a co-equal member of the committee. But as of May 1994, he had risen to Secretary General of the organization, and, as such, assumed a lead role on the committee. As Secretary General, Mr. Constant possessed the organization's sole membership verification mechanism – the seal used to authenticate membership cards issued to FRAPH's adherents. Additional evidence of his powerful role in the organization emerged several months later when, as Secretary General, he became virtually the only active member of the committee.

14. FRAPH's national structure began with 11 decentralized departmental offices under the direction of the central committee. Each office was headed by a regional director appointed by the committee. Regional directors were individuals personally connected with Mr. Constant through his prior work as the welfare director.

15. Under the departmental offices were 297 local and neighborhood offices. These offices were located in villages and towns around Haiti, and in the slum areas of populated neighborhoods of Port-au-Prince, the capital city. These offices monitored the

community to identify democracy activists, and served as bases of operation for FRAPH's activities.

16. People generally became members of FRAPH through their affiliation with Mr. Constant or others related to the de facto government. Some individuals were coerced to join or opted to join in order to protect themselves and their families from becoming victims of FRAPH. The paramilitary organization did not provide compensation to its members, but, by being a member of FRAPH you were allowed to act with impunity against the law as long as you were serving the interests of the de facto military regime.

17. Mr. Constant played a very large role in FRAPH. In my opinion, Mr. Constant created FRAPH, controlled FRAPH, and represented FRAPH. My opinion is based on the assertions Mr. Constant made in a 1995 deposition and from my own personal knowledge of Haiti during the early 1990s. In his deposition, Mr. Constant admitted that he visited the headquarters of the organization, granted membership cards, named officials to departmental and regional branches, represented FRAPH before the press, called press conferences, attended FRAPH rallies, and made pronouncements on the radio and television. In his own words, "I'm not a member of FRAPH. I'm a leader of FRAPH." Attached as Exhibit 2 is an excerpt from the 1995 deposition of Mr. Constant.

18. Mr. Constant was deeply engaged in FRAPH activities. As mentioned above, he was involved in the organization's day-to-day administrative activities. He was also involved in planning and carrying out major FRAPH activities. Two examples clearly illustrate this. In October of 1993, a U.S. Navy vessel, the Harlan County, was to

arrive in Haiti to deliver several hundred lightly armed Canadian and American troops who would act as police trainers, as agreed upon three months earlier at an internationally-brokered meeting at Governor's Island in New York between the de facto government and the legitimate exiled government. As the vessel approached Haiti, Mr. Constant personally called for a demonstration to prevent the troops from disembarking. Evidence of his influence emerged when international monitors verified that demonstrators sent by Mr. Constant to the docks in Port-au-Prince mimicked his stated talking points - namely that the fate of the police trainers aboard the Harlan County would be the same as that of US soldiers recently killed and dragged through the streets of Mogadishu in Somalia. The subsequent withdrawal of the Harlan County boosted Mr. Constant's power and authority. Also, in late December of 1993, Mr. Constant coordinated and directed members of FRAPH to set fire to a large portion of Cite Soleil, a slum in Port-au-Prince, which was believed to have a large number of Aristide supporters. Over 1,000 homes were burned and over 100 people died in this deliberate act of arson.

19. In addition to these major activities, FRAPH routinely intimidated the population and tried to eliminate Mr. Aristide's supporters. Typically, FRAPH targeted known pro-democracy activists. And, if those activists had gone into hiding, FRAPH moved against family members of their intended target. According to information I collected during visits to Haiti, the reports of the National Truth and Justice Commission, and reports by human rights observers, FRAPH routinely would murder, rape, torture, imprison, and kidnap activists opposed to the de facto government. FRAPH would also use specific techniques, such as "kout marasa" which involved simultaneously striking a

victim's ears which pierced the victim's eardrums, which caused profuse bleeding and permanent damage to that person's hearing. It also engaged in the particularly gruesome practice of "erasing," which involved scraping off a murder victim's face using a machete, to literally erase it. Erasing technique was particularly horrifying in the context of Haiti's deeply spiritual society where it is very important to ensure that loved ones find eternal rest after death. Because erasing removed the victim's identity, this ensured that the soul of the disfigured body would not find eternal rest. As a result, entire families were tormented and haunted by FRAPH's actions.

20. The incidence of politically-induced rape increased dramatically in late 1993 through 1994, when FRAPH was at its peak of power. Rape was used by FRAPH to accomplish a number of goals. If FRAPH members went to the home of an activist who supported Aristide or who opposed the de facto government and discovered that the activist was not home, then the FRAPH members might rape the women and children who were there as surrogates of their intended victim. In other cases, FRAPH members raped women who were known or suspected to be activists. Rape was used in both of these situations to instill fear, and to intimidate, shame, and silence the victim.

21. As a leader and organizer of FRAPH, Mr. Constant clearly knew of his organization's use of rape as a tactic for terrorizing and silencing the population. Further, Mr. Constant, like all Haitian citizens at this time, would have been well-aware of the increasing incidence of rape being enacted by gangs of paramilitary operatives as a result of the publicity it received via broadcast and written reports, and via Haiti's extremely effective word-of-mouth channels for the dissemination of information. Hence, even if Mr. Constant wished to ignore the information he was exposed to from his official

position in FRAPH, he would certainly have to know about it as a Haitian resident. Given his position of authority within FRAPH, there is no doubt that Mr. Constant could have stopped the rapes and other abuses if he had chosen to.

### **THE CURRENT STATE OF HAITI'S LEGAL SYSTEM**

22. The current legal system in Haiti has not shown an ability or willingness to prosecute for human rights abuses. As such, it cannot be relied upon to prosecute Mr. Constant for human rights abuses or any other crimes. As confirmed in recent international reports and during my most recent visit to Haiti, the Haitian judiciary continues to lack independence and to be plagued by corruption. Corrupt or poorly paid judicial officials remain highly susceptible to bribes whereby justice is bought by the highest bidder.

23. During the Duvalier period, judges were political appointees of the dictatorship. Since that dictatorship collapsed in 1986, the judicial system has not undergone any sustained reform. As a result, it still cannot sustain trials that are viewed as legitimate largely due to the fact that judges are either corrupt or vulnerable to external pressures. Further, the system as a whole has an extremely limited resource base and little or no functioning infrastructure.

24. There are currently no known former members of FRAPH in prison on account of crimes they committed during the early 1990s. Indeed, in view of the current dilapidated state of Haiti's prison system, even if FRAPH members were in prison, Haiti's jails would not be dependable institutions for holding them, as jailbreaks – at times in collusion with poorly paid and overmatched prison guards - are rampant. The dysfunctional state of Haiti's prison system further undermines the ability of Haiti's

police and judicial officials to sustain actions taken against individuals for human rights violations or other crimes.

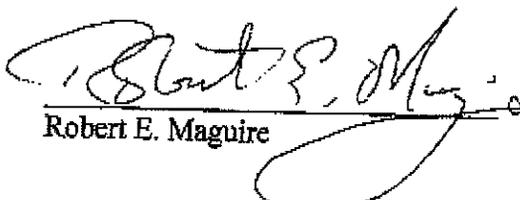
25. Although FRAPH collapsed in 1994, its members remain, by and large, in Haiti, with some of them recently politically active, particularly during 2004 – 2006 when Haiti was ruled by an appointed government following the coerced removal of elected authorities in early 2004. Today, these elements of Haitian society take advantage of the current situation of a corrupt police, a dysfunctional judiciary, and a weak prison system to pursue a common practice in Haiti known in Creole as “regleman de kont,” which translates into English as “settling of scores,” or using violence toward political ends. Hence, these individuals continue to enjoy the kind of impunity that emboldened them in years past.

### CONCLUSION

26. Given Mr. Constant's major role in FRAPH's activities, and thus his culpability for grave human rights abuses, Mr. Constant poses a serious risk to the people of Haiti. If Mr. Constant is deported to Haiti, it is likely that his former associates in FRAPH and his allies of the de facto military regime will feel buoyed by his return. Further, it is unlikely that the Haitian judicial system will be able to hold him accountable for his past atrocities.

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

Executed on this 18<sup>th</sup> day of May, 2007, in Washington, DC.

  
Robert E. Maguire

# EXHIBIT

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JANE DOE I, JANE DOE II AND JANE DOE :  
III, : 04 Civ. 10108 (SHS)  
 : FINDINGS OF FACT AND  
 : CONCLUSIONS OF LAW  
 :  
 :  
 Plaintiffs, :  
 :  
 :  
 -against- :  
 :  
 :  
 EMMANUEL CONSTANT, :  
 a.k.a. TOTO CONSTANT, :  
 :  
 :  
 Defendant. :  
 :  
-----X

SIDNEY H. STEIN, U.S. District Judge.

Jane Does I, II, and III, proceeding anonymously by permission of the Court, have sued Emmanuel “Toto” Constant for the violent attacks committed against them and others by a Haitian paramilitary organization he founded and led. The complaint states claims pursuant to the Alien Tort Statute, 28 U.S.C. § 1350, and the Torture Victim Protection Act, 28 U.S.C. § 1350 (note). On August 16, 2006, the Court entered a default judgment against Constant due to his repeated failure to appear in this action. The Court subsequently held an evidentiary hearing at which witnesses testified and documentary evidence was received in order to determine the amount of damages, if any, owing to plaintiffs. Due deliberation having been had, it is hereby ORDERED AND ADJUDGED that the following constitute this Court’s findings of fact and conclusions of law:

I. FINDINGS OF FACT

A. *Procedural Posture*

This action was commenced on December 22, 2004 by the filing of a Summons and Complaint, which were personally served on defendant Emmanuel Constant on

January 14, 2005 by Ricardo R. Burnham in front of 26 Federal Plaza in New York, New York. Proof of service was filed on January 26, 2005 and supplemented on January 24, 2006. (Doe v. Constant, 04 Civ. 10108, Return of Service dated Jan. 14, 2005; Affidavit of Service dated Jan. 4, 2006.)

After Constant failed to answer the complaint, the Clerk of Court for the Southern District of New York issued a certificate of default on December 1, 2006 stating that Constant had not filed an answer to the complaint and that the time for him to answer had expired. Plaintiffs then filed a Motion for Judgment by Default on December 7, 2005 on notice to the defendant, returnable on December 21, 2005. Defendant did not respond to that motion. On August 16, 2006, this Court issued an order granting plaintiffs' motion and setting the date for a damages hearing. Defendant was also served with a copy of that order by plaintiffs.

A fact hearing was held on August 29, 2006. The witnesses were Dr. Robert McGuire, a social studies expert who focuses on Haiti; Dr. Mary Fabri, a psychologist who examined Jane Doe I and Jane Doe II; and Jane Does I and II themselves. The Court was also shown a videotaped deposition of Dr. Benjamin Lerman, a physician who examined Jane Doe I and Jane Doe II. Plaintiff Jane Doe III did not testify; instead, she submitted an affidavit regarding the events at issue as well as the report of Dr. Kathleen Allden, her examining psychiatrist.

The Court is fully aware of the problems inherent in rendering factual findings based on an evidentiary presentation by only one side to a litigation, but Constant has failed to participate in this action despite repeated attempts to secure his involvement.

*B. Findings Regarding FRAPH*

For a three year period beginning in September 1991, following a coup that overthrew an elected president, Jean Bertrand Aristide, Haiti was governed by military rule. (Tr. of 8/29 Hearing, at 24-25.) During that time, the governing body utilized paramilitary forces to exact violence upon its political opponents. (Id. at 18.) Emmanuel Constant founded in approximately 1993 the Front Revolutionnaire Pour L'Avancement et le Progres d'Haiti ("FRAPH"), one such paramilitary organization. (Id.) Prior to forming FRAPH, Constant had worked for the military government as the director of the government welfare office. (Id. at 25.)

Once formed, FRAPH was overseen by a central committee of five members. (Id. at 33.) Constant was the only individual to serve on the committee throughout the entire period of military government. (Id. at 33, 40) That central committee coordinated FRAPH's activities with the armed forces, issued membership cards, and oversaw FRAPH's offices. (Id. at 34.) Constant was at all times the de facto leader of FRAPH and was active in its daily operations. (Id. at 39-40.) By May 1994, he was the organization's Secretary General and was the only active member of the central committee. (Id. at 40.) He communicated regularly with top commanders in the armed forces, and received funding from the military to support FRAPH's activities. (Id. at 26-27, 32.)

FRAPH maintained regional offices as well as hundreds of local offices, the latter of which were positioned primarily in poor urban neighborhoods where support for Aristide was strongest. (Id. at 35-36.) FRAPH closely surveilled dissenters. (Id. at 35.) It exacted widespread violence against opponents of the military regime, including, as

described below, plaintiffs Jane Does I, II and III. FRAPH raided neighborhoods populated by Aristide supporters, raping and abducting its targets. (Id. at 47-49.)

As FRAPH's commander and spokesperson, Constant was well aware of and at least implicitly improved of these acts. He was active in FRAPH's daily operations and was the organization's primary agitator, although he did not necessarily commit attacks upon dissenters himself. (Id. at 19, 39.) Dr. McGuire testified that, in his professional opinion, Constant must have known about the violent attacks perpetrated by his own organization. (Id. at 54-55.) Further, contemporaneous media reports widely documented FRAPH's activities. See John Shattuck, Human Rights Abuses in Haiti Worsen, Miami Herald, July 14, 1994.

*C. Jane Doe I*

At the time of the military coup, Jane Doe I lived in Port Au Prince with her husband and three children. (Id. at 60.) After the coup, her husband, a pro-democracy activist involved in local politics, disappeared. (Id. at 62-63.) She had reason to believe that he was one of 15 victims of a massacre that occurred on the day of his disappearance. (Id. at 63.) After that day, Jane Doe I began publicly to demand information about her husband's disappearance. (Id. at 63.) Within a few weeks, in the winter of 1992, she was confronted in her home by a group of five or six masked men, beaten, and dragged away; she was held at a penitentiary for five days and repeatedly beaten before being released in the street at night, alone and naked.<sup>1</sup> (Id. at 64-66.)

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<sup>1</sup> This incident and any other incident that occurred prior to FRAPH's formation have not been considered in fashioning plaintiffs' damages award.

In the ensuing months, Jane Doe I continued to speak out about her husband's disappearance. As a result, in April 1994 she was again visited by masked men<sup>2</sup> at her home. (Id. at 66.) She was raped in front of her children; her eldest son, who was eight years old at the time, was also beaten by the men. (Id. at 67-69.) Before leaving, one of the men stabbed Jane Doe I in the left side of her neck and her left ear. (Id. at 69-70.) She was again attacked by masked men in June of that year; that time, in addition to being raped by five aggressors, one of the men slashed her left breast open. (Id. at 71-74.) The men left her unconscious. (Id. at 74.)

After that attack, Jane Doe I spent a day regaining her strength and then walked for three days with her children to the mountains to reach refuge. (Id. at 74-75.) Throughout this time period, she continued to bleed and struggled to remain conscious. (Id. at 75-76.) It was several months before Jane Doe I received medical attention for her injuries and when she did, she learned that she was pregnant as a result of the rapes. (Id. at 77.) She gave birth in February 1995. (Id.)

Jane Doe I sustained numerous injuries as a result of these attacks. The medical evidence was that she suffered un-sutured, nearly fatal stab wounds to her breast, neck and cheek. (Dep. of Benjamin S. Lerman, M.D. ("Lerman Dep.") at 14-20.) Her life was permanently altered, since she experienced and continues to experience shame and fear resulting from the trauma. (Tr. at 118-20.) According to Dr. Mary Fabri, the psychologist who evaluated Jane Doe I, she suffers from severe chronic Post-Traumatic

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<sup>2</sup> All attacks on plaintiffs Jane Doe I and Jane Doe II were perpetrated by masked men. Plaintiffs therefore have been unable to identify their attackers. However, the Court is satisfied by a preponderance of the evidence that given that the methods employed by plaintiffs' attackers were similar to those employed by FRAPH, and given that plaintiffs were among the politically unpopular population that was the target of FRAPH activities, plaintiffs were attacked by FRAPH members. See Tr. at 49-51; Pl.'s Ex. 6, OAS/UN International Civilian Mission in Haiti, Press Release dated May 19, 1994 (attributing emergence of rape in part as a tool of political repression by FRAPH).

Stress Disorder (“PTSD”), with symptoms that include insomnia, nightmares, flashbacks, and the inability to concentrate (Dr. Mary Fabri’s Psychological Evaluation of Jane Doe I at 9; Tr. at 118.). She is socially isolated and suffers from severe migraine headaches (Tr. at 120, 122.)

*D. Jane Doe II*

Jane Doe II lived in the Martissant area of Haiti with her husband and their three young children at the time of the military coup. (Id. at 86.) Her husband was a member of the military but did not support the coup. (Id. at 88-89.) Instead, both husband and wife belonged to a pro-democracy organization. (Id. at 87.) As a result, Jane Doe II’s husband was accosted by masked men in his house in October 1991; he was beaten and Jane Doe II was raped, all in front of their children. (Id. at 90.) They were then blindfolded and taken to a penitentiary, where Jane Doe II spent six months separated from her children. (Id. at 90-91.)

In the months and years following her release, Jane Doe II lived in hiding in the Boutilier mountain region of Haiti near Port Au Prince, occasionally returning to the city to go to her brother’s house. (Id. at 93-94.) On one such visit, in July 1994, she was attacked by masked men carrying guns and was shot in the leg. (Id. at 94-96.) Jane Doe II was raped and she witnessed the rape of her sister-in-law as well; she was also beaten, blindfolded, and taken away. (Id. at 97-98.) She was left at Titanyen, a location allegedly used as a dumping ground by FRAPH for bodies. (Id. at 98-99.)

As a result of these attacks, and particularly the second attack, Jane Doe II suffered a head injury with scarring on the back of her neck and a bullet wound on her shin. (Lerman Dep. at 22-24.) She still suffers from constant headaches and pain in her

back and abdomen. (Id. at 24.) The evidence is also that she suffers from chronic severe PTSD, as well as from anxiety and depression. (Dr. Mary Fabri’s Psychological Evaluation of Jane Doe II at 9-10.)

*E. Jane Doe III* [Section Under Seal]

## II. CONCLUSIONS OF LAW

### A. *Subject Matter Jurisdiction*

As the Court has previously determined, it has subject matter jurisdiction over plaintiffs’ claims of torture, attempted extrajudicial killing and crimes against humanity pursuant to the Alien Tort Statute (“ATS”), 28 U.S.C. § 1350, and the Torture Victim Protection Act, 28 U.S.C. § 1350 (note). (August 16, 2006 Order.)

The ATS provides that “[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” 28 U.S.C. § 1350. In Sosa v. Alvarez-Machain, 542 U.S. 692, 124 S. Ct. 2739, 159 L. Ed. 2d 718 (2004), the U.S. Supreme Court held that the ATS does no more than confer jurisdiction on the district courts and does not affirmatively create any private rights of action. Id. at 713. However, the Supreme Court in Sosa noted that rights of action do exist for which the ATS provides jurisdiction. Because the Congress that enacted the ATS in 1789 understood that the “common law would provide a cause of action for [a] modest number of international law violations,” id. at 724, the ATS today encompasses violations of those international law norms possessing both (i) definite content and (ii) the same force and acceptance “among civilized nations [as] the historical paradigms familiar when [the ATS] was enacted.” Id. at 732.

In deciding Sosa, the Supreme Court cited with approval the Second Circuit's decision in Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980) holding that ATS claims can be brought for violations of "universally recognized norms of international law." Id. at 888. The Sosa Court also cited with approval Filartiga's recognition of torture as actionable under the ATS. Sosa, 542 U.S. at 732 (citing Filartiga, 630 F.2d at 890). Moreover, post-Sosa courts have found torture, extrajudicial killing and crimes against humanity all actionable under the ATS. See Mujica v. Occidental Petroleum Corp., 381 F. Supp. 2d 1164, 1179-80 (C.D. Cal. 2005); Doe v. Saravia, 348 F. Supp. 2d 1112, 1154-57 (E.D. Cal. 2004); see also Sosa, 542 U.S. at 762 (Breyer, J., concurring in part and concurring in the judgment) (ban on torture and crimes against humanity among universally recognized international norms). Accordingly, the Court has jurisdiction over plaintiffs' claims pursuant to the ATS. The Court also has jurisdiction over plaintiffs' claims of torture and attempted extrajudicial killing pursuant to the TVPA. See 28 U.S.C. § 1350 (note); Flores v. S. Peru Copper Corp., 414 F.3d 233, 245 (2d Cir. 2003).

#### *B. Personal Jurisdiction*

Constant was personally served with the complaint and summons in the Southern District of New York and is accordingly subject to the personal jurisdiction of this Court. (Doe v. Constant, 04 Civ. 10108, Return of Service dated Jan. 14, 2005; Affidavit of Service dated Jan. 4, 2006.)

#### *C. Constant's Default*

The complaint alleges that defendant Constant is liable for each of the atrocities described above, specifically, the torture and attempted extrajudicial killing of Jane Does I and III, the torture of Jane Doe II, and crimes against humanity. Constant having

defaulted, see 9/16/6 Order, the allegations of the complaint are accepted as true. Cotton v. Sloane, 4 F.3d 176, 181(2d Cir. 1993). Plaintiffs have stated claims against Constant for torture, attempted extrajudicial killing, and crimes against humanity and by default Constant is therefore liable to them on those claims.<sup>3</sup> This is so even though there is no evidence in the record of this litigation that Constant personally perpetrated the violence described above upon plaintiffs, due to the fact that he was the founder and leader of FRAPH and was aware of the attacks it carried out. See Doe v. Karadzic, No. 93-Civ.-0878, 2000 U.S. Dist. LEXIS 8108 at \*2 (S.D.N.Y. June 13, 2000); S. Rep. No. 249, 102d Cong., 1st Sess., at 9 (1991) (noting with regard to TVPA that “anyone with higher authority who authorized, tolerated or knowingly ignored those acts [of torture or extrajudicial killing] is liable for them”).

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<sup>3</sup> Torture pursuant to international law has been defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . intimidating or coercing [that person].” Lin v. Dep’t of Justice, 432 F.3d 156, 159 (2d Cir. 2005) (citing 8 C.F.R. § 1208.18(a)(1)); see also Filartiga, 630 F.2d at 883. The alleged torture must have been carried out by state officials or under color of state law, which includes paramilitary organizations working in concert with the government. See Arar v. Ashcroft, 414 F. Supp. 2d 250, 264 (2d Cir. 2006) (governmental involvement required); Doe v. Saravia, 348 F. Supp. 2d 1112, 1149-51 (E.D. Cal. 2004). The TVPA – but not the ATS – also requires that the plaintiff have been in the “offender’s custody or physical control” when being tortured. 28 U.S.C. § 1350 (note); Arar, 414 F. Supp. 2d at 260. Each of these requirements has been met here: two plaintiffs were forcibly raped, which constitutes torture, see Kadic v. Karadzic, 70 F.3d 232, 242 (2d Cir. 1995), and plaintiff Jane Doe III was the victim of a brutal attack that also constitutes torture. The attacks were under color of state law, given that FRAPH operated in tandem with the military dictatorship, and plaintiffs’ attackers clearly possessed physical custody over them.

Additionally, plaintiff Jane Doe I was the victim of a brutal stabbing and Jane Doe III the victim of an attack that were attempts to kill them. As such, liability has been clearly established for attempted extrajudicial killing, which is defined as “a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.” 28 U.S.C. § 1350 (note). Finally, FRAPH’s activities – including the extreme violence perpetrated against plaintiffs – involved the commission of inhumane acts “as part of a widespread or systematic attack against any civilian population.” Presbyterian Church of Sudan v. Talisman Energy, Inc., 226 F.R.D. 456, 480-81 (S.D.N.Y. 2005); see also In re Agent Orange Prod. Liability Litig., 373 F. Supp. 2d 7, 37 (E.D.N.Y. 2005). Thus, plaintiffs have stated a claim for crimes against humanity.

### *C. Damages*

Courts in this district and nationwide regularly award damages for violations of the ATS and the TVPA. See Tachiona v. Mugabe, 216 F. Supp. 2d 262, 267-69 (S.D.N.Y. 2002), rev'd on other grounds, 386 F.3d 205 (2d Cir. 2004), cert denied, 126 S. Ct. 2020, 164 L. Ed. 2d 806 (2006); Doe v. Karadzic, No. 93 Civ. 0878, 2001 U.S. Dist. LEXIS 12928, at \*1-2 (S.D.N.Y. Aug. 27, 2001); Arce v. Garcia, 434 F.3d 1254, 1256 (11th Cir. 2006). The amount and type of damages to be awarded is governed by both federal common law and by the law of the nation in which the abuses occurred. See Tachiona, 216 F. Supp. 2d at 267-68; Xuncax v. Gramajo, 886 F. Supp. 162, 197-99 (D. Mass. 1995); Filartiga v. Pena-Irala, 577 F. Supp. 860, 864-65 (E.D.N.Y. 1984).

Damages are permitted under Haitian law to compensate victims for their physical injuries and for pain and suffering. (Aff. of Mario Joseph, filed 9/11/06, ¶¶ 3-8.) Although plaintiffs concede that Haitian law does not provide for punitive damages, the common law of ATS and TVPA awards does provide for such damages in order to make the remedies pursuant to those statutes “commensurate with the real repugnance” of the actions involved. Tachiona v. Mugabe, 234 F. Supp. 2d 401, 417-18 (S.D.N.Y. 2002). Several federal courts have accordingly authorized punitive damages in the context of ATS or TVPA cases. See id. at 441; Filartiga, 577 F. Supp. 2d at 864-67; Saravia, 348 F. Supp. 2d at 1158; Xuncax, 886 F. Supp. at 198. The compensatory and punitive damage awards rendered by courts and juries in ATS cases differ, but all involve significant sums. See, e.g., Tachiona, 234 F. Supp. at 441 (\$1,000,000 in compensatory damages and \$5,000,000 in punitive damages to estates of individuals tortured to death); Saravia, 348 F. Supp. at 1159 (\$5,000,000 in compensatory and \$5,000,000 in punitive damages in

case involving extrajudicial killing and crimes against humanity); see also Karadzic, No. 93 Civ. 0878, 2001 U.S. Dist. LEXIS 12928, at \*1-2 (noting jury award of \$4.5 billion in case involving genocide and crimes against humanity).

In keeping with these standards, and based on Constant's default and on the evidence presented at the August 29, 2006 hearing, this Court will award plaintiffs both compensatory and punitive damages. Though no price tag can be placed on the atrocities visited upon these plaintiffs and other innocent civilians by FRAPH, plaintiffs are indeed entitled to monetary compensation and the Court will therefore grant it, guided in part by awards rendered in similar ATS and TVPA cases. Specifically, plaintiffs are awarded compensatory damages as follows:

*1. Jane Doe I.* As discussed more fully above, Jane Doe I was gang-raped by multiple FRAPH members on two separate occasions in front of her children; was beaten by those members; witnessed the beating of her oldest son; was stabbed in both her neck and the cheek near her ear; and was slashed through the breast. She did not receive medical attention for months after sustaining her injuries. The record reflects that these injuries caused her enormous physical and psychological injuries that continue to today. As commander of the organization that inflicted this pain and suffering upon Jane Doe I, defendant Constant shall be liable to her for compensatory damages in the amount of \$1,500,000.

*2. Jane Doe II.* As discussed more fully above, Jane Doe II was gang-raped by FRAPH members; witnessed her sister-in-law being gang-raped by FRAPH members; was shot in the leg by a FRAPH member and was badly beaten by FRAPH members. Jane Doe II still suffers from physical and psychological anguish due to these events. As

such, defendant Constant shall be liable to her for compensatory damages in the amount of \$1,000,000.

3. *Jane Doe III [Under Seal]*.

4. Finally, punitive damages shall be assessed against defendant Constant.

Punitive damages are awarded to punish a defendant and to deter that defendant from committing the same offense again. Cooper Indus. v. Leatherman Tool Group, 532 U.S. 424, 432, 121 S. Ct. 1678, 149 L. Ed. 2d 674 (2001). They are particularly appropriate where a defendant's actions are malicious or wanton. See Schmidt v. Devino, 206 F. Supp. 2d 301, 308 (D. Conn. 2001). As noted above, courts have recognized that acts of the type committed by FRAPH – such as murder, rape, and other types of torture exacted upon innocent civilians – meet this standard. See, e.g., Abebe-Jiri v. Negewo, No. 90 Civ. 2010, 1993 U.S. Dist. LEXIS 21158, at \*12 (N.D. Ga. Aug. 19, 1993); Filartiga, 577 F. Supp. at 866-67.

Constant's conduct was clearly malicious. As commander of FRAPH, Constant founded and oversaw an organization that was dedicated principally towards terrorizing and torturing political opponents of the military regime. His direction – or at a minimum, approval – of FRAPH's state-backed campaign of violence constitutes an inexcusable violation of international law and merits a stiff punishment. This is particularly so because given that the government of Haiti has not and likely will not prosecute Constant for his actions, "the objective of the international law making torture punishable as a crime can only be vindicated by imposing punitive damages." Id. at 864; see Tr. at 52-54 (testimony of Dr. McGuire that inadequate means of legal redress exist in Haiti and that, to his knowledge, no FRAPH members have to date been held accountable by Haitian

authorities). Considering all of the factors warranting an award of punitive damages, and in particular the high degree of reprehensibility of Constant's conduct, see BMW of North America v. Gore, 517 U.S. 559, 575, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996), the Court hereby finds that Constant is liable for \$15,000,000 in punitive damages; \$5,000,000 of this sum shall be awarded to each plaintiff in this matter.

III. CONCLUSION

The Court finds that defendant Constant is liable for torture, attempted extrajudicial killing, and crimes against humanity pursuant to the ATS and TVPA, and that Plaintiffs are entitled to compensatory and punitive damages as follows:

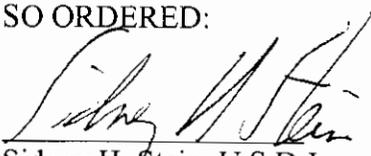
Jane Doe I: Compensatory damages of \$1,500,000 and punitive damages of \$5,000,000

Jane Doe II: Compensatory damages of \$1,000,000 and punitive damages of \$5,000,000

Jane Doe III: Compensatory damages of \$1,500,000 and punitive damages of \$5,000,000

Dated: New York, New York  
October 24, 2006

SO ORDERED:



Sidney H. Stein, U.S.D.J.

# EXHIBIT

6

COUNTY COURT: KINGS COUNTY

-----X  
 :  
 THE PEOPLE OF THE STATE OF NEW YORK :  
 :  
                   -against- :  
 :  
 EMMANUEL CONSTANT :  
 :  
                           Defendant. :  
 :  
 -----X

Attorney General  
 Indictment No.  
                           8206 2006

**DECLARATION OF MARIO JOSEPH**

## DECLARATION OF MARIO JOSEPH

I, Mario Joseph, declare as follows:

1. I have personal knowledge of the matters set forth in this declaration. If called upon to do so, I could and would testify competently thereto.
2. I am a licensed attorney practicing in Haiti, and a member of the bars of St. Marc and Port-au-Prince. I have extensive experience in civil litigation in Haitian courts. I have directed the Bureau des Avocats Internationaux (BAI) in Port-au-Prince, Haiti since 1996. Under my direction, the BAI offers legal representation to victims of human rights abuses. Our office works closely with judges, prosecutors, police and government officials, providing legal, technical and material assistance, as well as policy advice. The BAI trains Haitian law school graduates, hosts U.S. law student interns and works with U.S. law school clinics through its clinical program. I serve as the attorney of record for the victims, and the chief trial lawyer, and help supervise the BAI training program. Before joining the BAI, I worked as an attorney for the Catholic Church's Justice and Peace Commission. I have also held a variety of teaching and administrative posts. I am a graduate of the Ecole Normale Supérieure, Haiti's leading teaching college, and the Gonaives Law School. I am also a member of the Law Reform Commission in Haiti.
3. The BAI has not received funding from any government since 2004, but from 1995 to 2004, most of its support came from the Haitian government. I worked closely with government officials, from local judges, prosecutors and police to the Minister of Justice and occasionally the President from 1996-2004, and still work regularly with those officials to this day.
4. In the fall of 2000, I served as the *partie civile* lawyer in the combined criminal and civil proceedings against Emmanuel "Toto" Constant for his role in the Raboteau

Massacre that were held in the court of Gonaives, Haiti. I represented individual victims whose civil complaints against Mr. Constant and his co-defendants were heard simultaneous to the criminal charges. He was convicted *in absentia* for murder and ordered to pay 1 billion Haitian Gourdes in damages to the families of the victims.

5. I also serve as the *partie civile* lawyer representing the many victims of a December 1993 arson perpetrated against the civilian population of one of Port au Prince's largest urban slums known as Cité Soleil. An *ordonnance* – criminal charges similar to an indictment in the U.S. system – that charges Emmanuel Constant with participating in the arson has been issued by the Haitian courts. At least 1000 families lost their homes, and an unknown number of people perished in the fires.

6. There are several other criminal cases in which Emmanuel Constant has been implicated in his capacity as the head of a death squad known as FRAPH (Revolutionary Front for the Advancement of the Haitian People), however, formal charges have not yet been brought.

7. Based on my thirteen years experience working with the Haitian justice system on prominent human rights cases, I believe there is a strong risk that the Haitian government will not adequately prosecute Mr. Constant if he is returned to Haiti because:

- A. The Haitian justice system is historically weak, and was greatly weakened during the two years of the unelected Interim Government of Haiti or the "IGH" (March 2004-May 2006);
- B. Several other people in Mr. Constant's exact legal situation are circulating freely in Haiti without being prosecuted (see below);
- C. High profile and complex human rights cases pose a challenge to Haiti's judicial system. The prosecution of the case of the Raboteau Massacre took more than four years. It finally went to trial six years

after the return of democratic rule to Haiti.

- D. While in power, the IGH forced honest and objective judges off the bench, replacing them with their partisans. The most extreme example came with the firing of all the members of Haiti's highest court, the Cour de Cassation, in one fell swoop in December 2005. This maneuver had a strong impact on lower court judges, undermining their ability to remain impartial and objective. The judges and prosecutors appointed during the unconstitutional period of transitional government under the IGH remain on the bench.

8. I am also concerned about the weakness of Haiti's prison system at this delicate time in Haiti's transition to democratic rule. I visit the Haitian prisons on a regular basis to consult with victims of arbitrary detentions. I am a witness to the extreme overcrowding and poor security at the prisons. The quality of the treatment of prisoners depends on political allegiances of the prisoners and the prison guards. I have seen some prisoners held in inhuman conditions, while others, often the most dangerous, held with almost no security.

9. After years of work to pressure the Haitian government to prosecute for human rights abuses, we were finally able to achieve convictions in the case of the Raboteau Massacre in November 2000. However, in August 2002, one of the most notoriously dangerous of the convicted felons, a former member of Mr. Constant's death squad named Jean Tatoune escaped in a jail break after a bulldozer was used to break through the prison walls. Tatoune remains at large. The others convicted in the Raboteau case escaped from jail in February 2004. These men have not been re-arrested.

10. Other defendants with parallel situations to Mr. Constant have succeeded in evading justice. Three members of the High Command of Haiti's previous military

dictatorship, Colonels Carl Dorélien and Hebert Valmond and Major General Jean-Claude Duperval, also fled to the U.S. after democracy was restored to Haiti in 1994. All three were also convicted *in absentia* for the Raboteau Massacre. Finally, when they were deported back to Haiti in 2003, we thought we would have a chance at holding them accountable for human rights abuses. However, instead of exercising their right to a new trial, their only remedy under Haitian law, they sat in jail. Then, they took advantage of the overthrow of the elected government to break out of jail February 29, 2004 from the main prison in downtown Port au Prince. These men are also currently at large and no action has been taken to re-arrest them.

11. Another person convicted along with Mr. Constant in the Raboteau case is the number-two-in-command of FRAPH, Louis Jodel Chamblain. Mr. Chamblain took refuge in the Dominican Republic for many years. He was a leader in the armed invasion into Haiti that led to the coup d'état of February 2004. Under international pressure, Mr. Chamblain turned himself in to the IGH, ostensibly to stand trial on another *in absentia* murder conviction. But the "trial" in August 2004 was a transparent device to free Mr. Chamblain. There were several procedural irregularities. Amnesty International referred to the trial as "an insult to justice" and a "mockery." The *New York Times* called it "sham justice." Mr. Chamblain was released, and has not been pursued for any of his crimes. He even ran for Parliament in the February 2006 elections.

12. As of May 14, 2007, Haiti has had a democratically-elected government for only one year. There have been improvements in the rule of law. I have worked with President Preval and many justice officials before and know them to be committed to justice. However, their ability to implement that commitment is limited in light of the weaknesses and on-going corruption that still exist within the judiciary.

13. As the *partie civile* lawyer to the many victims of human rights violations from

the period of military de facto rule of 1991 to 1994, I do not feel confident at this time that the Haitian judicial authorities will respect the rule of law in the case of Mr. Constant. The more time that the Haitian government has to stabilize and reinforce our democratic institutions, the better chance that the judicial system will be capable of handling the complex case that Mr. Constant represents.

14. When Mr. Constant is deported to Haiti, I, along with other human rights attorneys, will work diligently for his prosecution for his crimes. However, the more time passes, the more likely it is that the Haitian justice system will recover from the coup and be able to respect the proper legal procedures and apply the rule of law in Mr. Constant's case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on May \_\_\_\_\_, 2007 in \_\_\_\_\_.

\_\_\_\_\_  
MARIO JOSEPH, Attorney

# EXHIBIT

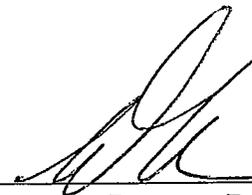
7

REPUBLIC OF HAITI )  
CITY OF PORT AU PRINCE )  
EMBASSY OF THE UNITED ) SS:  
STATES OF AMERICA )

*I, Dennis P. Williams, Vice-Consul, of the United States of America at Port-au-Prince, Haiti, duly commissioned and qualified, do hereby certify that Bocchit Edmond, whose signature and official seal appear on the attached document was on the 10th day of January 2001, Second Assistant to Max Morpeau, Director of Judicial Affairs, Ministry of Foreign Affairs in Port-au-Prince, Haiti.*

*For the contents of the annexed document, I assume no responsibility.*

*In witness whereof, I have hereunto set my hand and affixed the seal of the Embassy of the United States of America at Port-au-Prince, Haiti on this 17th day of January 2001.*



*Dennis P. Williams  
Vice-Consul  
Of the United States of America*

Liberté

Egalité  
République d'Haiti

Fraternité

Extrait "Plumitif d'Audience Criminelle du jeudi 16 Novembre 2000.

AU NOM DE LA REPUBLIQUE

Le Tribunal de Première Instance des Gonaïves compétemment réuni au Palais de Justice de cette ville, a rendu en audience publique et en ses attributions criminelles, le jugement suivant:

Entre

Le Ministère Public représenté par le Commissaire du Gouvernement, Me Frénot Cajuste, assisté de ses substituts: Me Rocky Pierre et Me Louiselmé Joseph, suivant au Nom de la Vindicté publique de Contumace de: Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval, Hébert Valmond, Martial Romulus, Frantz Douby, Ernst Prud'Homme, Jean-Robert Gabriel, Joseph Michel François, Bellony Groshomme, Reynald Timo, Estimé Estimable, Anatin O. Voltaire, Michel-Ange Ménard, Luc Roger Asmath, Ledix Dessources, Walner Phanord, Madsen Saint-Val, Roméus Walmyr, Tony Fleurival, Carlo Noé alias Tiblanc, Pierre Piloge Oriol, Emmanuel Constant, Louis Jodel Chamblain, Armand Sajous dit Ti-Armand, Wilbert Morisseau, Brutus ainsi connu, Chéry ainsi connu, Koukou ainsi connu, Ti Sonson ainsi connu, Pierre Paul Camille, Pierre André Présumé, Douze ainsi connu, Raphael Camille, Achou ainsi connu et Jacob Jean-Paul.

Vu l'Ordonnance de Renvoi en date du 30 Août 1999.

Vu l'Ordonnance de Notification aux accusés en date du 4 Octobre 2000.

Vu les procès-verbaux devant constater l'affichage de l'Ordonnance de domicile aux différentes Justices de Paix notamment aux Gonaïves, Port-au-Prince, Port-de-Paix, Cabaret, Anse-à-Galet.

Oui: le Réquisitoire oral du Ministère Public, les conclusions de la partie civile.

Attendu que par Ordonnance en date du 30 Août 1999, ordonnance à laquelle est insérée la prise de corps des accusés, Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval et consorts;

Attendu que l'Ordonnance de prise de corps n'a pas été exécutée, vue que les recherches effectuées par la Police et la Justice sont infructueuses et introuvables;

Attendu que le Tribunal siégeant avec l'Assistance de Jury en date du 04 octobre 2000 a accordé un délai de 10 jours pour présenter au Tribunal, délai qui n'a pas été respecté.

Attendu que toutes les formalités légales ont été régulièrement remplies.

Attendu que: Une personne accusée d'une infraction quelconque qui a été en fuite ne peut retarder de suspendre de la loi pénale;

Attendu que les 37 accusés: Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval, Hébert Valmond, Martial Romulus, Frantz Douby, Ernst Prud'Homme, Jean-Robert Gabriel, Joseph Michel François, Bellony Groshomme, Reynald Timo, Estimé Estimable, Anatin O. Voltaire, Michel-Ange Ménard, Luc Roger Asmath, Ledix Dessources, Walner Phanor, Madsen Saint-Val, Roméus Walmyr, Tony Fleurival, Carlo Noe alias Tiblanc, Pierre Piloge Oriol, Emmanuel Constant, Louis Jodel Chamblain, Armand Sajous dit Ti-Armand, Wilbert Morisseau, Brutus ainsi connu, Chéry ainsi connu, Koukou ainsi connu, Ti Sonson ainsi connu, Pierre Paul Camille, Pierre André Présumé, Douze ainsi connu, Raphael

*A. Perreault*

Camille, Achou ainsi connu et Jacob Jean-Paul sont en fuite.

Attendu que Raoul Cédras, Ex-Général et consorts sont accusés d'assassinats, de complicité d'assassinats;

Attendu que le crime d'assassinat est prévu et puni par les articles 241 et 247 du Code Pénal;

Attendu que l'article 241 du Code Pénal stipule "tout meurtre commis avec préméditation ou guet-apens est qualifié d'assassinat";

Attendu que l'auteur intellectuel, matériel et ou complice d'une infraction, une fois constante devra punir de la même peine;

Attendu que les CONTUMAX sont accusés du crime d'assassinat et de la complicité d'assassinat;

Attendu que le Coupable du crime d'assassinat parricide, infanticide sera condamné aux travaux forcés à perpétuité, Article 247 du Code Pénal;

Attendu que les Contumax ont commis des préjudices moraux contre les victimes du Massacre de Raboteau;

Attendu que les articles 1168-1169 du Code Civil Haïtien stipulent: Art 1168 "Tout fait quelconque de l'homme qui cause à autrui un dommage oblige celui par la faute duquel il est arrivé à le réparer";

Attendu que les préjudices causés aux victimes de Raboteau sont des préjudices moraux et en fonction de ces préjudices, les victimes doivent bénéficier nécessairement réparation civile et proportionnelle aux préjudices subis.

Par ces motifs:

Le tribunal, au Réquisitoire conforme du Ministère Public

1o-Condamne: Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval, Hébert Valmond, Martial Romulus, Frantz Douby, Ernst Prud'homme, Jean-Robert Gabriel, Joseph Michel François, Bellony Groshomme, Reynald Timo, Estimé Estimable, Anatin O. Voltaire, Michel-Ange Ménard, Luc Roger Asmath, Ledix Dessources, Walner Phanord, Madsen Saint-Val, Roméus Walmyr, Tony Fleurival, Carlo Noé alias Tiblanc, Pierre Piloge Oriol, Emmanuel Constant, Louis Jodel Chamblain, Armand Sajous dit Ti-Armand, Wilbert Morisseau, Brutus ainsi connu, Chéry ainsi connu, Koukou ainsi connu, Ti Sonson ainsi connu, Pierre Paul Camille, Pierre André Présumé, Douze ainsi connu, Raphael Camille, Achou ainsi connu et Jacob Jean-Paul, de travaux forcés à perpétuité.

2o-Les condamne solidairement à UN (1) MILLIARD DE GOURDES en faveur des victimes de Massacre de Raboteau.

3o-Les condamne en outre aux Amendes et aux frais envers l'Etat.

4o-Dit que les biens des condamnés de Contumace seront à partir de l'Exécution du jugement considérés comme des biens d'absents et à partir de là ils seront séquestrés et le compte du séquestre sera rendu aux victimes et à l'Etat haïtien.

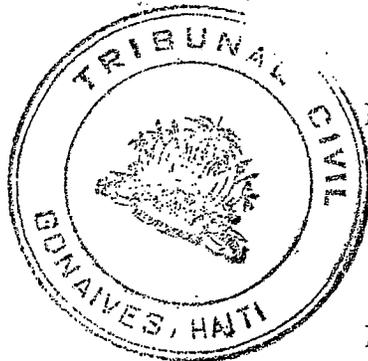
5o-Dit que le jugement sera exécuté à la diligence du Commissaire du Gouvernement.

Ainsi rendu par Nous, Me Napela Saintil, Doyen du Tribunal Criminel siégeant sans Assistance de Jury, en présence de Ministère Public, Me Frénot Cajuste, Me Rocky Pierre et Me Louiselmé Joseph, respectivement Commissaire et Substituts du Commissaire du Gouvernement de ce ressort,

de la partie civile représentée par Me Mario Joseph et Me Duclas Marcelin, et avec l'assistance du Citoyen RAOUL JACQUES, Greffier du siège.

Il est ordonné à tous huissiers sur ce requis de mettre le présent jugement à exécution aux Officiers du Ministère Public près les Tribunaux Civils d'y tenir la main à tous Commandants et autres Officiers de la force publique d'y prêter main forte lorsqu'ils en seront légalement requis.

En foi de quoi la minute du présent jugement est signée du Doyen et du Greffier sus-dits.



Pour Expédition Conforme  
Collationnée

RAOUL JACQUES, GREFFIER EN CHEF

Vu pour la légalisation de la signature du greffier

Me Napela Saintil, Avocat  
Doyen du Tribunal de Première Instance  
Gonaïves



Vu pour la légalisation de la signature du Doyen du  
Tribunal de Première Instance des Gonaïves

Me Lionel Sajous, Avocat  
Directeur Général du Ministère de la Justice  
et de la Sécurité Publique

Liberty

Equality  
Republic of Haiti

Fraternity

Extract from the Records of Criminal Hearing of Thursday, November 16, 2000.

IN THE NAME OF THE REPUBLIC

The Court of First Instance of Gonaïves, duly convened at the Court House of this town, issued at a public hearing, in its criminal division, the following judgment:

between

The Public Prosecutor represented by the Government's Commissioner, Attorney Frénot Cajuste; assisted by his deputies: Attorney Rocky Pierre and Attorney Louiselmé Joseph, against the followed accused people who failed to appear: Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval, Hébert Valmond, Martial Romulus, Frantz Douby, Ernst Prud'homme, Jean-Robert Gabriel, Joseph Michel François, Bellony Groshomme, Reynald Timo, Estimé Estimable, Anatin O. Voltaire, Michel-Ange Ménard, Luc Roger Asmath, Ledix Ressources, Walner Phanord, Madsen Saint-Val, Roméus Walmyr, Tony Fleurival, Carlo Noé a/k/a Tiblanc, Pierre Piloge Oriol, Emmanuel Constant, Louis Jodel Chamblain, Armand Sajous a/k/a Ti-Armand, Wilbert Morisseau, Brutus known as such, Chéry known as such, Koukou known as such, Ti Sonson known as such, Pierre Paul Camille, Pierre André Présumé, Douze known as such, Raphaël Camille, Achou known as such, and Jacob Jean-Paul.

Considering the adjournment order dated August 30, 1999;

Considering the order of notification to the accused parties dated October 4, 2000;

Considering the reports which shall note the posting of the domicile order to the Various Justices of the Peace, also in Gonaïves, Port-au-Prince, Port-de-Paix, Cabaret, Anse-à-Galet;

Having heard the oral pleading of the Public Prosecutor, and the conclusions of the civil party.

Considering the order dated August 30, 1999 providing for the arrest of the accused parties Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean Claude Duperval, et al;

Considering that the arrest order was not executed, since the research conducted by the Police and the Justice Department remained unsuccessful;

Considering that, on October 4, 2000, the Court in a session with the assistance of a jury, granted a period of 10 days to submit to the Court, a period which was not complied with;

Considering that all the legal formalities were duly complied with;

Considering that a person charged with an offense, who escaped, cannot continue suspending the application of criminal law;

Considering that the 37 accused people: Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval, Hébert Valmond, Martial Romulus, Frantz Douby, Ernst Prud'homme, Jean-Robert Gabriel, Joseph Michel François, Bellony Groshomme, Reynald Timo, Estimé Estimable, Anatin O. Voltaire, Michel-Ange Ménard, Luc Roger Asmath, Ledix Ressources, Walner Phanor [sic], Madsen Saint-Val, Roméus Walmyr, Tony Fleurival, Carlo Noé a/k/a Tiblanc, Pierre Piloge Oriol, Emmanuel Constant, Louis Jodel Chamblain, Armand Sajous a/k/a Ti-Armand, Wilbert Morisseau, Brutus known as such, Chéry known as such, Koukou known as such, Ti Sonson known as such, Pierre Paul Camille, Pierre André Prémumé, Douze known as such, Raphaël Camille, Achou known as such, and Jacob Jean-Paul have escaped;

Considering that Raoul Cédras, former general, et al, are charged with assassinations, and being accomplices to assassinations;

Considering that the crime of assassination is provided for and punished under Sections 241 and 247 of the Criminal Code;

Considering that Section 241 of the Criminal Code provides that "any murder committed with premeditation or a trap is an assassination";

Considering that the intellectual or material perpetrator and/or accomplice to an offense, if ongoing, shall have the same punishment;

Considering that the Defendants in default are charged with the crime of assassination and being accomplices to an assassination;

Considering that the person guilty of assassinating one's parents or children shall be condemned to forced labor in perpetuity, under Section 247 of the Criminal Code;

Considering that the Defendants in default are liable for damages for mental stress to the victims of the Raboteau Massacre; Considering that sections 1168-1169 of the Haitian Civil Code provide: Section 1168 "Any fact which causes damage to another shall be repaired by the person through whose fault the damage was caused";

Considering that the damage caused to the Raboteau victims is due to mental stress and, because of that damage, the victims must necessarily obtain civil redress, proportional to the damage sustained;

For these reasons:

Upon the pleadings duly [submitted] of the Public Prosecutor, the Court

1st – Sentence: Raoul Cédras, Philippe Biamby, Carl Dorélien, Jean-Claude Duperval, Hébert Valmond, Martial Romulus, Frantz Douby, Ernst Prud'homme, Jean-Robert Gabriel, Joseph Michel François, Bellony Groshomme, Reynald Timo, Estimé Estimable, Anatin O. Voltaire, Michel-Ange Ménard, Luc Roger Asmath, Ledix Ressources, Walner Phanord, Madsen Saint-Val, Roméus Walmyr, Tony Fleurival, Carlo Noé a/k/a Tiblanc, Pierre Piloge Oriol, Emmanuel Constant, Louis Jodel Chamblain, Armand Sajous a/k/a Ti-Armand, Wilbert Morisseau, Brutus known as such, Chéry known as such, Koukou known as such, Ti Sonson known as such, Pierre Paul Camille, Pierre André Prémumé, Douze known as such, Raphaël Camille, Achou known as such, and Jacob Jean-Paul, to forced labor in perpetuity.

2nd – They are ordered jointly and severally to pay ONE (1) BILLION GOURDES to the victims of the Raboteau Massacre.

3rd – They are also ordered to pay the fines and costs to the State.

4th – States that the property of those sentenced by default shall, from [the date of the] enforcement of judgment, be considered as the property of absentees, and shall therefore be seized, and the seizure account shall be provided to the victims and the State of Haiti.

5th – States that the judgment shall be enforced by the Government's Commissioner.

Thus pronounced by Us, Attorney Napela Saintil, Chief Justice of the Criminal Court sitting without the assistance of a jury, in the presence of the Public Prosecutor, Attorney Frénot Cajuste, Attorney Rocky Pierre, and Attorney Louiselmé Joseph, Government's Commissioner and Deputy Commissioners, respectively in this jurisdiction, the civil party represented by Attorney Mario Joseph and Attorney Duclas Marcelin, and with the assistance of Citizen Raoul Jacques, Clerk of the Court.

It is ordered to all bailiffs, thus requested, [are] to execute this judgment, all officers of the Public Prosecution's Department with Civil Courts [are] to assist, and all Commanders and other Police Officers [are] to assist, whenever legally requested.

In witness whereof, the original of this judgment is signed by the aforesaid Chief Justice and Clerk of the Court.

For collated true copy

/signed/

RAOUL JACQUES, CHIEF CLERK OF THE COURT

/stamp of the Civil Court, Gonaïves, Haiti/

Seen for authentication of the Clerk of the Court's signature

/signed/

Attorney Napela Saintil

Chief Justice of the Court of First Instance

Gonaïves

Seen for authentication of the signature of the Chief Justice of the Court of First Instance of Gonaïves

Attorney Lionel Sajous

General Director of the Ministry of Justice and Public Safety

Seen for the authentication of the signature of Attorney *Napela Saintil*  
Chief Justice of the Court of First Instance of *Gonaïves*  
appearing *on the front page of the third page of this document*  
/illegible/ December 19, 2000  
197<sup>th</sup> /illegible/ 21967  
of the /illegible/  
Receipt: *Exempted*

/stamp of the Ministry of Justice of Haiti/

/signed/

Seen for the authentication of the signature  
of Attorney *Lionel A Sajous*  
*General Director of the Ministry of Justice*  
Appearing on Receipt No. *Courtesy*  
Registered under No. *19494*  
with the Ministry of Foreign Affairs  
Port au Prince /illegible/  
/signed/  
MAX MORPEA  
Director of Legal Affairs

# EXHIBIT

8

# *The Atlantic* Giving "The Devil" His Due

For several years in the early 1990s U.S. intelligence maintained close ties with a Haitian named Emmanuel "Toto" Constant, the founder of a savage paramilitary group that has been held responsible for a prolonged wave of killings and other atrocities. Toto Constant today walks the streets of Queens, a free man. How did he come to find refuge in the United States? Who has been holding up his deportation?

DAVID GRANN | JUNE 2001 ISSUE | GLOBAL

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No one remembers who first saw him in the neighborhood, but one day last summer Emile Maceus was nearly certain that Emmanuel "Toto" Constant—the man everyone called "the devil"—was standing on his front stoop. The man was six-foot-three, maybe more; he wore a coat and tie, and his hair—a tightly curled Afro—was neatly combed. He had come, he said, to show a client Maceus's house, a three-bedroom in Queen's Village, New York. He was a real-estate agent, he said, and had seen the pink for sale sign on the front lawn.

Maceus stared at him. The man's face was pudgier than Maceus remembered from Haiti, during the military regime of the early 1990s. Back then he had been bone-thin and ghostlike, sometimes appearing with an Uzi or with a .357 Magnum tucked under his shirt. To help keep the junta in control he had terrorized the population with his paramilitary squad—a legendary outfit of armed civilians who, together with the Haitian military,

allegedly tortured, raped, and murdered thousands of people. "Can we look around?" the man asked.

Maceus wasn't sure what to do. Maybe it wasn't Constant. He was bigger than Maceus recalled, more genial, and before Maceus knew it, the man was walking through his house, poking his head into each room, looking at the floorboards and the toilets, taking note of the overhead space in the kitchen, and commenting in Creole. In the living room the man passed a poster on the wall of [Jean-Bertrand Aristide](#)—the once and future Haitian president, and the paramilitaries' archenemy—but didn't give it a second look. Maybe he was just a real-estate agent after all, just another Haitian immigrant trying to survive in New York.

But as the real-estate agent was leaving, Maceus kept thinking, What if he *is* Toto Constant? Maceus knew that in 1994, after the United States overthrew the military regime, Constant, a fugitive from Haitian justice, had been allowed, inexplicably, to slip into the country. Maceus had heard that after Constant had finally been arrested and ordered deported, he had in 1996 mysteriously been released under a secret agreement with the U.S. government—even though the Haitian government had formally requested his extradition and U.S. authorities had found photos of his group's victims, their bodies mutilated, pasted to the walls of his Port-au-Prince headquarters like trophies. As the man was opening the front door, Maceus's curiosity overcame him. He asked in Creole, "What's your family name?"

The man hesitated. "Constant."

It *was* Toto Constant. For an instant the two Haitians stood there, staring at each other. Then Constant and his client sped off in a car. Maceus went inside and found his wife. She was trembling. "How could you bring that devil in my house?" she shouted. "*How could you?*"

News of the encounter spread through the city's sprawling Haitian community, from Flatbush to Laurelton to Cambria Heights to Brooklyn, as it would have in Haiti—by *teledjòl*, word of mouth. Constant had ventured out into the community several times since the U.S. government had set him free, but never with such audacity—selling houses to the same people he had driven into exile. When he first arrived in Queens, he seemed to emerge only periodically. He was spotted, someone said, at a disco, clad in black, dancing on the day of Baron Samedi, the voodoo lord of death who guards cemetery gates in his top hat and tails. He was seen at a butcher shop and at a Blockbuster. Haitian-community radio and local newspapers reported the sightings—"haiti's grim reaper partying in u.s.," announced one headline—but he always managed to vanish before anyone could locate him. Finally, in 1997, the rumors led to a quiet street in Laurelton, Queens, near the heart of the Haitian community, where for years exiles had hoped to shed the weight of their history—a history of never-ending coups and countercoups—and where Constant could be seen sitting on the porch of the white-stucco house he shared with his aunt and mother. "The whole idea of Toto Constant living free in New York, the bastion of the Haitian diaspora, is an insult to all the Haitian people," Ricot Dupuy, the manager of Radio Soleil d'Haiti, in Flatbush, told his listeners after Constant moved in.

It was not long before residents draped the street's trees and lampposts with pictures of Constant's alleged victims, their hands and feet bound with white cord or their limbs severed by machetes. Neighbors shoved one of the most horrifying pictures—a photo of a young boy lying in a pool of blood—under Constant's door. But a few days later Constant was back on his porch. Locals came by and spat at his bushes; they stoned his door. Then, last summer, after Constant's appearance at the Maceus house, an angry crowd appeared around his home, yelling "Murderer!" and "Assassin!" At one point, as they were gathering, someone spotted a figure

down the road—a well-known ally of Constant's, "a spy," as one person cried out—and the crowd chased after him. When he disappeared and there was still no sight of Constant, the crowd marched to the real-estate office, four miles away, where it threatened to drive the Haitian owner out of business unless he fired his new employee.

By last November, Haitians had created permanent Toto Watches—networks that tracked Constant's every whereabouts. At about this time I met Ray Laforest, one of the Toto Watchers, and he agreed to show me where "the devil" could be found. He told me to meet him at Binnette's Hair Palace, on Linden Boulevard, next to the real-estate office in front of which Constant had been seen smoking on his lunch break, and we would look for him.

The barbershop was in the center of Cambria Heights, across the street from a Haitian restaurant and next to a Haitian grocer. It was a small, cramped space, with a TV in the corner. Customers sat in old chrome seats with their heads tilted back, while barbers in white smocks trimmed their hair. As I waited for Laforest, one of the barbers, a young man with a gold chain around his neck, looked at me suspiciously. I explained that I was doing a story on Toto Constant. He said that Constant was a "vampire," someone who sucked the life out of people.

An older barber, who had been working at his chair on the opposite side of the room, walked over to a closet and pulled out a shovel. It was long, with a thick metal handle, and in a bit of showmanship he lifted it in the air like a club. "This is what they do to the devil people" like Toto, he said, banging it against the floor.

A few minutes later Laforest walked in. He was a large man, with a beard and sunglasses. He carried with him several Wanted posters of Constant, one of which he unfurled, revealing an old black-and-white photograph of

the reputed death-squad leader. A moustache curled down around the corners of his mouth, and several crooked teeth showed between his lips. In bold letters the poster said wanted: emmanuel "toto" constant for crimes against the haitian people.

As we walked outside, Laforest told me that Constant had disappeared since the protest. "He's gone into hiding again," he said. We got in his car and drove through the neighborhood, past a series of elegant Tudor houses, until we arrived at the house where Constant had last been seen. "Why are you stopping?" I asked.

"I'm numb," he said. "If I saw him right now, I'd tie him up myself." He told me that Constant's men and other paramilitaries had dragged one of his friends from a church and shot him in broad daylight, and that earlier his own brother had been tortured by the Haitian military. We waited for several minutes, parked behind a bush. "*Bay kou bliye, pote mak sonje*," Laforest said.

"What does that mean?" I asked.

"It's an old Creole proverb," he said. "Those who give the blows forget, those who bear the scars remember."

### Letting Toto Speak for Toto

I had been looking for Constant ever since I heard that a man facing charges in Haiti for crimes against humanity was living among the very people against whom the crimes were said to have been committed. Unlike Cain, who was cast out of his community, Constant had become an exile in a community of exiles, banished among those whom he had banished. Though he had fled justice, he could not fully escape his past. He had to face it nearly every day—in a glance from a neighbor, or a poster on the street.

More important, he was now, for the first time, confronted with the prospect of real justice. Last fall the Haitian government put him on trial in absentia for the murder of at least six people in the town of Raboteau in April of 1994. Dozens of others were also on trial. It was a historic case—the first major attempt by the Haitian government to prosecute Haitians (or anyone else) for the brutal crimes committed by the military regime and to test its judicial system, which had been corrupt for so long that it was essentially nonexistent. As a result there was growing pressure on the U.S. government, from home and abroad, to extradite him, and Constant, once intoxicated by press attention, gave fewer and fewer interviews. Since the protest outside his house he had apparently vanished.

When I reached his lawyer, J. D. Larosiliere, last October, he told me that things were at their most critical juncture. A barrel-chested Haitian-American who speaks a combination of formal English and street slang and has a penchant for finely tailored suits, Larosiliere told me he was often referred to as "the Haitian version of Johnnie Cochran." Denying that there had even been a massacre at Raboteau, he said that if Constant were sent back to Haiti, he would never receive a fair trial and would likely be assassinated. Because of the desperateness of the situation, Larosiliere agreed to let Constant talk to me at length about his current predicament and the allegations against him. "All we want to do is get his side of the story out," Larosiliere said.

So, one afternoon several days later I headed to Larosiliere's office, in Newark, New Jersey. When I arrived, Constant and Larosiliere were in a closed-door meeting, and I waited outside in the foyer. I could hear the sound of Creole punctured by occasional bursts of English. A moment later the door swung open, and a large man in a double-breasted suit hurried out. It took me a moment to recognize Constant—he looked at least thirty pounds heavier than in the pictures I'd seen of him taken during the military

regime. He still had the same moustache, but on his heavier face it no longer looked so menacing. He wore a turtleneck under his jacket and, to my surprise, a gold earring in his left ear. "Hey, how you doing?" he said, speaking with only a slight accent.

I had expected many things, but not this: he looked like an average American. We sat down in a small conference room lined with books. He leaned forward and then back, and I took out my tape recorder and laid it on the table. Finally he said, "It's time for Toto to speak for Toto."

It was the first of more than a dozen interviews. As he told me his story over the next several months, he often spoke for hours on end. He turned over his voluminous notes and private papers, his correspondence and journals. During that time I also interviewed his alleged victims, along with human-rights workers, United Nations observers, Haitian authorities, former and current U.S. officials within the White House, the State Department, the Immigration and Naturalization Service, and the intelligence community, many of whom had never before spoken publicly about Constant. I also gained access to intelligence reports, some of which had previously been classified, and State Department cables. With these and other sources I was finally able to piece together not only the story of Emmanuel "Toto" Constant but also much of the story of how the United States government secretly aided him and later shielded him from justice.

### Voodoo Paramilitary

In October of 1993 the USS *Harlan County*, loaded with military personnel, was sent steaming toward Haiti's capital, Port-au-Prince. President Bill Clinton had dispatched the ship and its crew as the first major contingent of an international peacekeeping mission to restore to power Haiti's first democratically elected President, Jean-Bertrand Aristide. Aristide was a political priest, a wiry, passionate, bug-eyed orator who had risen to power

in late 1990 on a mixture of socialism and liberation theology. The downtrodden of Haiti, which is nearly everyone, called him "Titid" and revered him; the military and the economic elite reviled him as an unstable radical. He was deposed in a coup less than a year after taking office and ultimately fled to the United States. Since then the military, along with roaming bands of paramilitaries, had murdered scores of people. The bloodshed had galvanized the international community, and the ship's arrival was hailed as a turning point in the effort to restore both some semblance of public safety and the island's democracy.

On October 11, as the *Harlan County* neared port, a group of UN and U.S. officials, headed by the charge' d'affaires, Vicki Huddleston, and accompanied by a large press corps, came to formally welcome the ship and its troops. The assembly waited at the entrance to the port for a guard to open the gate, but nothing happened. Documentary footage shows Huddleston sitting in the back of her car with the CIA station chief. Speaking to another embassy official, she says into her walkie-talkie, "Tell the captain [of the port] I am here to speak with him."

"Roger, ma'am. We have passed that repeatedly to him, and we are getting nowhere."

"Well, tell him I'm here at the gate and I'm waiting for the authorities to open it."

"He doesn't want to talk right now ... He ran away."

"Open the gate."

"We're having some problem with hostile staff. We may have a situation."

Indeed, at that moment a band of armed men, under the direction of the then little-known thirty-six-year-old paramilitary leader Toto Constant,

stormed the area. The men, who had already blocked the dock where the *Harlan County* was supposed to tie up, surrounded Huddleston's car, banging on the hood and yelling in English, "Kill whites! Kill whites!"

There were only about a hundred in all, many of them pot-bellied and out of shape; although some carried guns, many wielded sticks and pitchforks. But the show of force, just a few days after U.S. soldiers had been killed in Somalia, proved terrifying. Constant put on a savvy performance for the press cameras: his ragtag troops banged on sheepskin drums and shouted "Somalia" as if it were a battle cry. They drank and caroused through the night, turning their vehicles' lights toward the open sea where the *Harlan County* was still waiting. Finally President Clinton ordered the ship to leave. It was one of the most humiliating retreats in U.S. naval history, and a surprising one even to those who forced it. "My people kept wanting to run away," Constant told reporters afterward. "But I took the gamble and urged them to stay. Then the Americans pulled out! We were astonished."

That day was the coming-out party for Constant and his Front for the Advancement and Progress of Haiti, better known as FRAPH, which in Creole evokes the word "*frapper*," meaning "to hit." (Constant said the name had come to him in a dream.) Organized by Constant several months earlier, FRAPH was described by its leader as a grassroots political organization—"a mysterious event"—that would rise from the masses and replace the remnants of Aristide's populist movement. The party literature, which Constant composed on an old manual typewriter and handed out to the press, explained that "FRAPH is a popular movement of unity, where all the social sectors are firmly intertwined to bring perfect harmony to the Haitian people."

But FRAPH was a peculiar sort of political party: although it offered free food and liquor to lure supporters, most of its thousands of followers were

drawn from the armed bands that operated at the military's behest and from former members of the now defunct Tonton Macoutes, the infamous paramilitary organization named for a child-snatching bogeyman in Haitian fairy tales. At rallies FRAPH members demonstrated mass salutes that seemed designed to evoke fear: at Constant's cue his followers would raise their left hands over their heads and slam their right fists into them, or raise their right hands in the air, palms forward, in Nazi fashion. And although FRAPH's literature spoke of unity, Constant declared publicly, "If Aristide were to return, he would die. Aristide and his supporters are the enemies of this country."

In this setting Constant tried to cultivate an image as the only gentleman in a band of thugs. At the official launching of FRAPH, as his men surrounded him with guns, he released a handful of doves. Rather than don a soft hat and sunglasses, or camouflage pants, like other paramilitaries, he often [appeared in a neat blue suit and tie](#). He sometimes carried a bamboo cane in his right hand, which he leaned on as he walked. He was well suited for the part of the gentleman. He had been raised within Haiti's tiny aristocracy, and had studied at Canadian universities and worked briefly in New York as a Haitian diplomat. He spoke English with only a slight accent, and translated for the press in Spanish, French, and, of course, Creole. "Never forget that I am from the establishment," he liked to say. "I am not just any Joe out there. I'm *Constant*."

Still, there was something frightening about him. His eyes, set deep in his head, were glassy and jittery. U.S. officials and reporters said that he was wired on cocaine (Constant has always denied this), and he was known to stay up all night, driving wildly through the streets, his bodyguards hanging out the back of the car with their machine guns. In public he usually appeared with a man named Jojo, a fierce former Macoute who claimed that his pregnant wife had been murdered by Aristide's supporters and who was

regarded as a merciless killer. "He is not afraid of anything," Constant still says of Jojo respectfully.

Throughout the summer and fall of 1993, with Jojo as his partner, Constant began a campaign to set up FRAPH offices in every town and village. Members received special ID cards and, apparently with the military's approval, machine guns. Like the old Macoutes, they operated as part local bosses, part spies, part extortionists, part militia, and part political cadre. But at their core they were an extension of the military's might, a brutal "force multiplier," as one U.S. intelligence report put it, which would allow the regime the deniability that a prudent government always looks for in the use of murder. "FRAPH's will is an order," Constant declared shortly after the storming of the port. "When we ask for something, the entire country has to accept it."

### "Facial Scalping"

More and more packs of armed men began to roam at night, looking for Aristide supporters. They were believed to be FRAPH, the police, or the military, or a combination of all three, but they were usually careful to disguise themselves with hoods or women's clothing (a trademark of the old Macoutes). They carried tire irons, M-16s, Uzis, pistols, machetes, axes, and "voodoo powders," which were widely believed to be lethal. They broke into homes and seized their political enemies. "I realized that I was among animals," an Aristide supporter who was taken prisoner by one of these armed packs told human-rights monitors. "At first they played with me, taking out their guns and saying I would die. Then they took me to a little torture chamber where there was a small bed ... They started beating me about the buttocks with their truncheons, one after the other. At that moment I thought I would die. I passed out. When I came to, I was in a cell with another man. There were rivers of blood on the floor. Some of it was

mine."

"The scenario is always substantially the same," the [OAS/UN International Civilian Mission](#) reported in 1994, after an extensive investigation. "Armed men, often military or FRAPH members, burst into the house of a political activist they [sought] to capture." If he wasn't there, the report said, the intruders attacked his wife or sister or daughter. "One guy took me by the hands and led me to the front porch," a woman told Human Rights Watch. "He said lie down. He said, 'If you don't I'll split your head open' ... He pulled his pants down to his knees, lifted up my nightgown, pulled down my underpants, and raped me."

Faceless bodies began to appear in the streets. The assailants had developed a kind of art known as "facial scalping," a bloody ritual in which a person's face was peeled from ear to ear with a machete. It was a way to torture people even in the afterlife, because, many believed, such mutilation would prevent a proper burial—trapping the spirit eternally in purgatory.

As the bodies piled up, Constant held forth. He would often sit in a rattan chair in the courtyard of the house that had been his father's, a sprawling Art Deco mansion with a swimming pool and fountains, and speak to the press. Unlike other paramilitary leaders, who purposely remained in the shadows, Constant craved coverage. He let reporters sleep in his garden. He cut back the hedges to make more space for them and handed out T-shirts emblazoned with FRAPH's name. "I had one-on-ones with the greatest reporters in the world," he recalls today. "All of them. I've met all of them. At one point I was the most interviewed person in the world. I was one of the most important. I had Japanese journalists at my place. It was incredible." Constant enjoyed playing the role of statesman. He warned the United States not to intervene and threatened to shut down the country in protest of the world embargo put into place after the coup. He called for the

dissolution of Haiti's parliament, echoing Jojo, who had earlier warned that if it didn't disband, FRAPH would call on the people to "tie up the deputies." "What I say comes from my heart," Constant would say. Or "A leader has to know how to play with the army, the power, and the people."

As he cultivated the press, Constant also courted Haiti's *houngans*, or voodoo priests, a potent psychological force. He portrayed himself as an embodiment of the most ferocious spirits. He held public ceremonies in front of the markets or at temples, where his men laid out small skulls. At a typical ceremony he would lie on the ground, surrounded by skulls and fire. Then, as he rose from the flames, the crowd would chant in Creole, "Toto for President! Without Toto, Haiti can't have a life." Though he still carried a .357 Magnum, he insisted that he no longer needed it. "I have the power of voodoo with me," he said.

### General Constant's Boy

In Haiti nearly every leader has a hidden history, a family closet usually filled with the bones of enemies. Constant inherited the secrets, and to some degree the power, of his father. Gerard Emmanuel Constant had been the army chief of staff under Haiti's dictator François "Papa Doc" Duvalier during the 1960s, a loyal soldier who once famously rose from his bed in the middle of the night to execute, along with other officers, more than a dozen of his friends at the dictator's command. He remained a symbol of the old ruling order after it had collapsed.

But shortly after the military coup, in September of 1991, as his disciples emerged from the barracks to restore the old Duvalier system, the seventy-two-year-old general slipped into a coma and died. All the military leaders and former Duvalier supporters turned out for the old general's funeral. "It was a real phenomenon," Constant says. "I was inheriting all my father's protection and power and people. It was a symbolic transference." In his

private papers Constant went even further: "My prominence, some might argue, is destiny ... To be the first son of General Gerard Emmanuel Constant is the call to arms for Emmanuel Gerard Constant, myself."

It was not long before people feared the younger Constant even more than they had feared his father. By the middle of 1994 thousands of Haitians had been slaughtered or had disappeared, and although no one knew for sure how many had been killed by FRAPH itself (most human-rights observers had by then been driven out of the country), the group was universally considered the most brutal of all the right-wing paramilitary outfits. Witnesses, many of them found floating on rafts as they tried to escape to the United States, told international authorities that Constant's men, in an effort to wipe out opposition, were annihilating the population. Even FRAPH members started to flee in disgust. "When they kill and rape people, we [new members] are forced to sit and watch," a former recruit told U.S. authorities, according to a declassified document obtained by the Center for Constitutional Rights for use in a lawsuit against FRAPH. Later, as part of their initiation, this same man said, the recruits were made to join the assaults.

Though Constant continued to deny the allegations, the UN concluded by 1994 that Constant's organization was "the only political movement [in Haiti] whose members have been linked to assassinations and rapes." In the spring of 1994 a secret cable from the office of the American military attaché in Port-au-Prince warned, "All over the country, FRAPH is evolving into a sort of Mafia." Its members were "gun-carrying crazies," one cable stated, eager to "use violence against all who oppose it."

According to witnesses, when a FRAPH member turned up dead in Cité Soleil, a sprawling slum in Port-au-Prince, in December of 1993, Constant's men descended within hours. Carrying machine guns and machetes, they

torched a thousand houses in revenge, killing more than a dozen people. Here is an excerpt from the account by [Human Rights Watch/Americas-NCHR](#):

They entered the neighborhood, looked for specific persons and shot them on sight, doused the precarious one-room shacks with gasoline, set them alight, and fired their weapons into the air as the flames spread ... During the fire, known FRAPH members beat and arrested several people under the eyes of the military ... The Justice and Peace Commission reported that firefighters were turned back by armed men ... [who] nailed doors shut, imprisoning people in their homes.

Constant, as usual, denied FRAPH's involvement. As he later pointed out, "If I was going to really react, there would be no more Cité."

Though there were reports that he was on the scene during the fire and at other times had participated personally in torture sessions, Constant was careful to avoid serious implication. But the more Constant appeared on television to deny any connection with crimes, the more he seemed the face of them. By the autumn of 1994 he was no longer merely the head of FRAPH; he had become, in the eyes of most Haitians, the embodiment of the regime: the voodoo lord of death, Baron Samedi, himself.

### A Mysterious Escape

In July of 1992 Brian Latell, the leading CIA analyst for Latin America, visited Haiti to gather intelligence as policymakers in Washington tried to assess military rule in Haiti. Afterward, in a report later obtained by the

press, he wrote, "I do not wish to minimize the role the military plays in intimidating and occasionally terrorizing real and suspected opponents, but my experiences confirm the [intelligence] community's view that there is no systematic or frequent lethal violence aimed at civilians."

Playing down the bloodshed (Latell called the head of the junta, Lieutenant General Raoul Cedras, "a conscientious military leader"), the report directly conflicted with those coming from human-rights organizations, the press, and even the State Department. But along with subsequent CIA reports, it contributed to the ongoing vacillation in Washington. Whereas President Bill Clinton was pushing to restore the exiled Aristide to power, many in the CIA, along with elements in the Pentagon, feared that Aristide was a dangerous populist. In fact, Aristide was a problematic figure for the United States (he had once suggested necklacing his enemies with burning tires). But a crucial CIA report, which was circulated on Capitol Hill just after the *Harlan County* incident, seemed to grossly exaggerate his instability, claiming that he was so unbalanced psychologically that he had once had to be hospitalized. The charge later proved to be false, but at the time, it fueled American opposition to an invasion. "There were factions in the process who didn't want to get involved in Haiti and could use these intelligence reports to strengthen their position," one former Clinton Administration official says.

But the evidence of "systematic" and "frequent lethal violence aimed at civilians" was overwhelming. And finally, in September of 1994, three years after the coup and almost a year after the *Harlan County*'s retreat, President Clinton ordered a full-scale invasion to end what he called the "reign of terror." "We now know that there have been ... over three thousand political murders," he said. In preparation for battle Constant changed FRAPH's name to the Armed Revolutionary Front of the Haitian People and, according to news accounts, stockpiled weapons and "secret"

powders that, he declared, would be able to "contaminate water so that the GIs will die." He claimed to have one powder ground from the bones of AIDS victims. Appearing in camouflage pants and a black T-shirt, a machine gun at his side, he no longer gave any hint of the diplomat. "Each FRAPH man," Constant said, "must put down one American soldier."

But faced with the might of the United States, the junta agreed to step down. Incredibly, after thousands of U.S. soldiers seized the island, many of them countenanced FRAPH's activities as expedient for maintaining order. When asked why, U.S. soldiers said they had been told by their superior officers that FRAPH was a legitimate opposition party, like Republicans and Democrats. U.S. soldiers even stood by, insisting they were not a local police force, while FRAPH members beat back civilians who had spilled onto the streets expecting liberation. It was only after random bands of FRAPH members mowed down a crowd of Haitians and shot and wounded an American photographer, and a radio conversation was intercepted in which Constant and his men threatened to "break out weapons" and "begin an all-out war against the foreigners," that U.S. forces finally reversed their stance. On October 3 they stormed FRAPH headquarters. A jubilant crowd gathered outside, cheering them on. Inside, amid piles of nail-embedded sticks, Molotov cocktails, trophy photos of mutilated corpses, and thousands of secret documents, soldiers surrounded more than two dozen FRAPH members. They bound their hands and gagged them, while the crowd screamed, "Let them die! Let them die!" As the soldiers departed with their FRAPH prisoners, the crowd rushed inside, smashing the headquarters.

Back at his father's mansion, Constant listened to a police scanner, waiting for the soldiers to seize him. His wife and children had already fled. At one point, while he was holed up, according to the *Chicago Tribune*, he yelled at a journalist, "Everybody who is reporting the situation bad ... by the grace of

God, they will wind up in the ground!" But even as other FRAPH members were taken into custody, Constant remained free.

Not only was Constant not arrested but, to everyone's amazement, the U.S. embassy spokesman, Stanley Schrager, whose assassination Constant had called for only two days before, arranged a press conference for him outside the presidential palace. News footage shows Constant standing under the glaring sun, sweating in a jacket and tie. "The only solution for Haiti now is the reality of the return of Aristide," he said. "Put down your stones, put down your tires, no more violence." As he spoke, hundreds of angry Haitians pushed against a barricade of U.S. soldiers, screaming, "Assassin!" "Dog!" "Murderer!"

"If I find myself in disagreement with President Aristide," Constant pressed on, his voice now cracking, "I pledge to work as a member of loyal opposition within the framework of a legal democracy."

"Handcuff him!" people yelled from the crowd. "Tie him up! Cut his balls off!"

As the barricade of troops gave way, U.S. soldiers rushed Constant into a car, while hundreds of jeering Haitians chased after it, spitting and beating on the windows.

U.S. authorities insisted to reporters at the time that the speech was meant to foster "reconciliation," but one senior official told me later that it had been a disaster: "Here we were protecting him from the Haitians when we were supposed to be protecting the Haitians from him."

Throughout the occupation, ensconced in his house, where, he says, U.S. soldiers routinely came by to check on his safety, Constant tried to reinvent his past. "We're the ones who kept this country secure for a year," he told

reporters, according to published accounts. "Nobody talks about that ... Aristide needs an opposition, and ... I am the only organization right now that ... can allow us to say there is a democracy." But the incoming government took a different view—and within a few months Constant was ordered to appear before a magistrate investigating charges against him of torture and attempted murder. On the day of the hearing people claiming to be FRAPH's victims waited for Constant outside the courtroom. He never appeared. He told me later that on Christmas Eve of 1994, with a small suitcase and what money he could stuff in his pockets, he had crossed the border on foot into the Dominican Republic, made his way to the airport, and then, using a valid visitor's visa he had obtained before the coup, caught a plane to Puerto Rico. From there he flew to the mainland United States without incident, ending up days later on the streets of New York City.

He was spotted by Haitians at nightclubs and galleries, and at one point managed to get out a radio broadcast to his followers back home. "As for you FRAPH members," he said, according to a transcript of his statement, "close ranks, remain mobilized ... FRAPH people, where are you? FRAPH is you. FRAPH is me." Finally, after the Haitian government demanded that the United States do something, Secretary of State Warren Christopher wrote in a March, 1995, letter to Attorney General Janet Reno, "Nothing short of Mr. Constant's removal from the United States can protect our foreign policy interests in Haiti."

Two months later, saying that Constant had been allowed to enter the country owing to a bureaucratic error, INS officials surrounded him in Queens as he went to buy a pack of cigarettes. They forced him to the ground and frisked him. He was taken to Wicomico County Detention Center, on the Eastern Shore of Maryland. In September a judge ordered his deportation to Haiti. As he waited for the outcome of his appeal, he wrote letters to world leaders, including Nelson Mandela.

Dear Mr. President: It is hoped that this letter finds you in the best of health ... I could not hope to fill one of your footprints, yet here am I writing to one of the few men in all the world that could understand my situation, being in a white man's jail.

He grew a beard. He read Malcolm X and Che Guevara. "I am ... a political prisoner," he wrote in a letter to Warren Christopher. At one point he was put on a suicide watch. He wrote poetry.

If my friends could see me now What would they say? They would ask themselves what the hell Am I doing in a place like this ... They would ask themselves why I am so down and why I cry at night They would want to know if I've done something wrong. And they would stay away without helping a bit. If my friends could see me now they would be so glad not to be with me. And would forget what I've done for them in the past. But one day I'll be out of jail and I'll be out there kicking too. I'll be out there stronger and wiser and I will reach my goals... That day with a smile on my lips I will ask myself: But if my friends could see me now And quickly I will answer. They wish they were my friends.

Then, in December of 1995, as the INS inched closer to deporting him, Constant decided to play the only card he had left. He threatened to divulge details of U.S. covert operations in Haiti which he said he had learned about while secretly working for the Central Intelligence Agency.

## The Perfect Recruit

The story Constant tells begins around Christmastime, 1991. It was shortly after the coup, and he was working at Haiti's military headquarters when Colonel Pat Collins, the U.S. military attaché at the embassy, phoned and asked him to lunch. "Let's meet at the Holiday Inn," Collins said.

### From the archives:

["Can't Anybody Here Play This Game?"](#)  
(February 1998)

The Central Intelligence Agency is just no good at what it's supposed to be doing. So writes the author, a former CIA officer, who describes a corrosive culture in which promotion-hungry operatives collect pointless intelligence from worthless foreign agents. By Edward G. Shirley

["Inside the Department of Dirty Tricks"](#)  
(August 1979)

"The business of intelligence has its ugly side." By Thomas Powers

### From *Atlantic Unbound*:

[Interviews: "The Numbers Game"](#)  
(February 1997)

"During the Vietnam War ... a young CIA analyst ... single-handedly discovered massive fraud and political maneuvering on the part of the CIA, the military, and the White House."

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role in the power vacuum left by Aristide's ouster.

Constant was a tempting choice for recruitment by U.S. intelligence. He spoke impeccable English, knew his way around the military, and, as one of the new regime's top advisers, occupied an office right next to that of the

Collins, who, a government spokesman confirmed, was working for the U.S. Defense Intelligence Agency at the time, could not be reached for comment. But an associate says he was known to show up often at Haitian military headquarters. Constant says Collins was there on the night of the coup. Lynn Garrison, a Canadian who served as a strategist and adviser to the junta, told me that Collins was there in the days that followed, conferring with the new regime.

That day at the Holiday Inn, Constant says, he and Collins sat by a window overlooking the pool. Many people, Collins said, were impressed by Constant's background and suggested that Constant might play an important

junta's head, General Cedras. Since the coup Constant had taught a course on the dangers of Aristide's liberation theology at the training site for the National Intelligence Service (SIN). The service, according to *The New York Times*, had been created, funded, trained, and equipped by the CIA, starting in 1986, to combat drug trafficking, but it had quickly become an instrument of terror (and even, according to some U.S. officials, a source of drugs).

Constant says that Collins told him in this first meeting that he wanted him to meet someone else at Collins's home. "I'm not going alone," Constant remembers saying, only half joking. "I'm going to come with a witness." He says that he and an associate drove that night to Collins's residence. Although the streets were pitch-black, owing to a fuel shortage, Collins's house was completely lit up. Constant says they went upstairs, into a small antechamber next to the master bedroom, where a man with dark hair was waiting. He had on a short-sleeved shirt, and Constant noted his muscles. "I'm Donald Terry," the man said.

Constant says that as they sat drinking cocktails, Terry began to pepper him with questions about the stability of the current military regime, and pulled out a booklet—"a roster"—containing the names and backgrounds of officers in the Haitian armed forces. He and Collins asked Constant who were the most effective.

A few days later, Constant says, Terry asked to meet again, this time alone at the Kinam Hotel. "Why don't you join the team?" Terry asked.

"What's the team?"

"A group of people working for the benefit of Haiti." It was then, Constant says, that Terry divulged that he was an agent of the CIA. The U.S. government will not comment on any questions regarding Donald Terry;

Terry himself could not be reached.

But the CIA had been deeply involved with the Haitian military and Haitian politics for decades. Constant remembers that his father served as an informal adviser to an agent who used to stop by for conferences on their porch in the 1960s. According to press reports, the Agency, after starting SIN, had planned to finance various political candidates in the 1987 presidential elections. The Senate Intelligence Committee vetoed the plan.

Constant says he eventually agreed to serve as a conduit between the Haitian military regime and U.S. intelligence. He says he was then given the code name Gamal, after Egypt's former nationalist leader, Gamal Abdel Nasser, whom he admired, and a two-way radio, with which he checked in regularly.

It is impossible to confirm all the details in Constant's account. For the record, a CIA spokesman stated that it was "not our policy" to confirm or deny relationships with any individuals; he would not discuss Constant. But there is little doubt that Constant was a paid informant. After Allan Nairn first reported Constant's connection to the intelligence community, in *The Nation* in October of 1994, several officials acknowledged it to reporters, and many have confirmed it to me recently. What has been a mystery is the nature of the relationship; just how big an asset was Constant? U.S. authorities have maintained that he was nothing more than a two-bit snitch. But interviews with several people connected to the intelligence community, together with Constant's own version of events, suggest that from the beginning he was a generous font of information, and later, according to at least some, a full-fledged operative. After the coup he helped to run a little-known operation called the Bureau of Information and Coordination, which collected various kinds of data: the number of deaths and arrests in Haiti, the number of adherents of liberation theology, and so

forth. Constant says the data collection was for the purposes of economic development, but it clearly had another purpose: military intelligence.

According to Constant and to a non-Haitian connected to the intelligence community, Constant and another BIC member were the first to enter one of Aristide's private quarters, where they found a hoard of secret documents. Some of these ended up in the hands of U.S. intelligence officers, who in turn provided the documentation for controversial reports claiming that Aristide was mentally unbalanced, contributing to the voices against him in the United States.

A former senior CIA official justified using an informant who was as potentially problematic as Constant thus: "You can't help these bad guys accomplish stuff, but you got to give 'em money to find out what's happening in groups like that. And if you're going to recruit in a terrorist group like FRAPH, you're not going to get any functional equivalent ... [of] a Western democrat ... To find out what's going on, you rather rapidly end up in the same position as the FBI with the Mafia—recruiting and paying money and even granting freedom to lower-level folks, even some high-level folks."

Another former high-ranking government intelligence official put it more bluntly: "Look, we could have gone to the nuns [in Haiti] and asked them [to give us information]. But I'm sorry—the nuns are nice people, but what they know about terrorism is nothing." This same official observed that Constant was "one of a whole range of people we had relationships with, all with the knowledge of the Administration." He said he believed that Constant stood somewhere "on the spectrum of the relationship, from someone who talked to you occasionally to tell you things he wanted you to know to someone who was a wholly owned, salaried subsidiary, who provided information even to the detriment of his cause."

Constant says that by the time he officially created FRAPH, in 1993, he had been assigned another handler—John Kambourian, a strong, no-nonsense sort, who, Constant says, would drive with him through the mountains of Petionville, exchanging information. When I reached Kambourian by telephone and asked him about Constant, he told me to speak to public affairs at the State Department and hung up. It remains unclear how involved U.S. intelligence officers were, if they were involved at all, in the actual formation and evolution of FRAPH. A CIA spokesman, Mark Mansfield, stated for the record that the "CIA had no role in creating, funding, or guiding the FRAPH organization." But Lynn Garrison told me that when Constant was trying to start a secret police force, long before FRAPH, Collins told Garrison directly, "Let's let it play out and see where it takes us." One U.S. government official involved with Haiti during the military regime goes even further, saying he thinks it was common knowledge in intelligence circles that Collins was involved with FRAPH long before it became an official organization (by which time Collins had left the country). "If he didn't found FRAPH," this official told me, "he was at least very, very close to it." Trying to explain why the CIA or the Defense Intelligence Agency might form such an alliance, this official added, "People are always looking for counterbalance, and at that point Aristide was not in power. I'm not excusing it, but they didn't quite know what FRAPH was going to become."

Despite the existence at the time of internal State Department documents portraying the organization's members as thugs and assassins, Constant says that his handlers never asked him about FRAPH's alleged rapes and murders. What's more, Constant says, the CIA and the DIA encouraged him to help derail Aristide's return and even knew beforehand about his demonstrations against the *Harlan County*, which helped to delay the invasion for nearly a year. A CIA spokesman denied to me that the Agency

pushed its own foreign-policy goals in Haiti, but Lawrence Pezzullo, the U.S. envoy to Haiti at the time, along with other U.S. officials, publicly accused the CIA of exaggerating the threat of the *Harlan County*, thereby derailing Aristide's return and, in essence, pursuing its own agenda. And Constant says, "If I'm guilty of all these things they say, then they are guilty of them too."

### The Breakup

Toto Constant's relationship with U.S. intelligence, according to both Constant and several CIA officials, continued undisturbed until the spring of 1994. It was then, Constant says, that Kambourian called and said they had to meet. He told Constant to bring the radio. "I'm sorry," Constant remembers Kambourian's saying, "but we can't see you anymore."

"Why?" Constant asked.

Kambourian said that in the wake of the *Harlan County* incident and Constant's rhetoric against the President, Washington wanted to sever its ties.

U.S. officials say that intelligence ties to Constant were more or less cut at this point. Cooperation between FRAPH and the U.S. military was eventually curbed, and in October of 1994 American forces stormed FRAPH headquarters. Afraid for his life, Constant went to meet Lieutenant General Henry Shelton, who was in charge of the occupation. Constant recalls, "I told Shelton straight out, 'I'm a son of a general, and I inherited his honor and dignity, and that's why I'm here to ask what the rules of engagement are, because I don't understand them.'"

The answer he got seems to have been a blunt one. General Shelton, who is now the Chairman of the Joint Chiefs of Staff, declined my requests for an

interview, but his staff provided me with the transcript of an oral history, which Shelton recorded during the invasion and in which he vividly describes at least part of the encounter with Constant.

"I had no desire at all to meet with Constant ... as far as I was concerned, we had potentially disarmed and disabled his organization from top to bottom." But he said that Constant had been pushing for a meeting for weeks, and eventually he and Major General David Meade decided to see if they could get from him what they wanted: first, that he provide a complete list of FRAPH members and the location of their weapon caches; second, that he call each one of his key thugs and tell them to surrender their arms; and third, that he publicly accept Aristide's return and transform FRAPH into a peaceful political party.

"We were using a little bit of psychological warfare on Constant," Shelton, in his oral history, disclosed. "I sent Meade in first. Meade was to go in and tell [Constant] that he was getting ready to meet the big guy ... I gave Meade about twenty or thirty minutes to set the conditions, and then I arrived and my security guy, the seal, entered the room ... rattling the doors and kicking on doors to make sure the place was secure before I came in, as they always did. But Constant saw all this, and it was kind of like seeing a meeting with the Godfather being set up ... and so he got very nervous at that time, and his eyes got very big." It was then, Shelton said, that Meade walked out and he walked in. "[Constant] immediately stood up and smiled and stuck out his hand, at which time I just said to myself, 'Remember two things—force and death they understand.' So I looked at him and I said, 'Sit down!' and he immediately sat down, and the smile left his face ... and I said to him, 'I understand that you have agreed to all the conditions that we have set for you to keep us from hunting you down and members of your organization.' And he said, 'Oh, yes, yes, I have no problem with any of that.' And then he started, 'But Haiti is ...' and he started into his role about the history of Haiti

and how important the FRAPH is. I let him get about ten seconds into that, and I cut him off and told him very curtly that I was not interested in hearing any of that right now."

The very next day Constant gave the speech accepting Aristide's return and casting himself as the new leader of the democratic opposition. According to a highly placed U.S. official, the speech was outlined by Constant's old CIA contact, Kambourian, and handed over to the U.S. embassy, which in turn dictated it to Constant, who apparently accepted it without his usual bravado. "He could have been imprisoned," the official told me, "but the judgment was made that as long as we could get out of him what we wanted, it would be okay for him to walk around."

General Shelton may have wanted little to do with Constant, but other elements of the U.S. government seem to have done more than just keep an eye on him. Immigration authorities told me it was "impossible to believe," as one put it, and "totally bogus," as another put it, that Constant could have entered the United States at that time on a valid visa without either help from someone in the U.S. government or forged documents.

"Everyone knew he was a killer," says one former INS official. "His picture was everywhere." Constant told me that he didn't ask for any help in getting out, but that he did alert certain U.S. officials before he left, and "it's possible they did something." A high-ranking intelligence-community source, although not commenting directly on Constant's case, described the background mechanisms: "On the high end of the spectrum, the director of the CIA can bring in fifty to a hundred people in the top spy category. These are people to whom we owe a lot, because they have risked their lives doing things of great value to our nation, so it is [if] you want to get out, we will get you out; you want to get in, we will get you in, get you a house, whatever ... Lower down, you can do everything from a little help around the edges to supplying visas."

## How Toto Got Sprung

Sitting in Wicomico County Detention Center, on the verge of being deported with the full support of the State Department and the INS, Constant leveraged the potential exposure of his old connections to save himself. Threatening to divulge the details of his relationship with the CIA, he filed a \$50 million lawsuit against Warren Christopher and Janet Reno for wrongful imprisonment. "CIA operatives collaborated with the Plaintiff," his lawyer maintained in the suit. To underscore his warning he appeared on *60 Minutes* in December of 1995 in his prison jumpsuit. "I feel like that beautiful woman that everybody wants to go to bed with at night, but not during the daytime," he told Ed Bradley. "I want everybody to know that we are dating."

It was at this point that Benedict Ferro, who was the district director of the INS in Baltimore at the time of Constant's incarceration, began to see things that he had never seen before and that were, as he puts it now, "off the scale." Ferro had worked for the INS for more than thirty years, and he was used to working on cases that involved sensitive government issues. After Constant made his threats, Ferro says, highly placed officials throughout the government began to get involved, even though the Administration had already publicly and privately indicated that Constant would be returned.

A cover page from a May 24, 1996, Justice Department memorandum titled "Emmanuel Constant options" indicates that those consulted in the process included Samuel Berger, the deputy national-security adviser; Strobe Talbott, the deputy secretary of State; Jamie Gorelick, the deputy attorney general; and David Cohen, the deputy director of operations for the CIA. (The cover page was one of several released to the National Security Archive through the Freedom of Information Act; the memo itself was not released.) "Look, they came out of the woodwork when [Constant]

started singing," says Ferro, who is now the president of INSGreencard.com.

By the time of the memo Constant had already been held in prison for just over a year, and there was confusion about how long the United States could detain him under what many legal experts consider to be an extremely murky part of immigration law.

It was then—"at the eleventh hour," as Ferro recalls—that government officials received information regarding a plot to assassinate Constant when he was returned to Haiti. At least some at the INS maintained that, even if true, the report merely meant that Constant should remain in a U.S. prison until a later date. "We have Cubans from the Mariel boatlift who remain in jail," Ferro says. "We have people from the Middle East who are in jail who can't be sent back. This is not a new process." But according to several officials involved in the deliberations, the information swayed the senior decision-makers. "I didn't want to send someone, even a killer like Constant, to his summary execution," one person involved in the case told me. When I asked one senior official who it was that had uncovered the plot on Constant's life and prepared the classified report, he answered simply, "Reliable U.S. intelligence sources."

Ferro and several of his colleagues at the INS made one last attempt to press their views, insisting that they could not in good conscience send a suspected terrorist into a community where he might harm U.S. citizens or where, just as likely, U.S. citizens might harm him. But it didn't matter. The final decision was hammered out over several days, and senior officials from the Justice Department, the State Department, and the National Security Council participated. "To this day I can't understand why he's not rotting in a U.S. jail," Ferro says. "We were not reinventing the process. He was just treated differently than any other murderer or terrorist."

Ferro himself gave Constant the good news.

"They called me at the prison and said I could get my things and go," Constant says today, still surprised.

"I basically just read from the script," Ferro says. "This guy was believed to have murdered and assassinated all these people, and we released him into our society. It was outrageous."

A copy of the legal settlement that set the terms for Constant's release, which I obtained from Constant, reveals certain conditions: Constant must live in his mother's home in Queens and must remain within the confines of the borough except for visits to the INS office in Manhattan; he must check in with the Immigration and Naturalization Service every Tuesday; and he must not talk about, among other things, Haitian politics or the details of the legal agreement. "I like exposure," he says, "so this is the worst thing they can do to me, this gag order." (As may be now be apparent, Constant takes an expansive view of the restrictions.) Constant's formal legal status is this: he is under an outstanding order of deportation whose execution has been withheld on the advice of the State Department.

When I recently asked Warren Christopher about the deal with Constant, he said he could not recollect the details of what had happened and would try to call me back. Later his assistant called and said that he still didn't have "sufficient recollection of the matter that you discussed to comment, and unfortunately it would entail flying back East to look at his old paperwork, and unfortunately he is not able to do that at this time."

Constant's lawyer, J. D. Larosiliere, who has continued to cite the threat to his client's life and the protection to which Constant is thus entitled under the UN Convention Against Torture, says, "I knew that he wasn't going to be deported, but I needed a hook in the legal system to allow them to have a

way out. Plausible deniability. That's all this game is about. Plausible deniability." Indeed, to many Haitians and human-rights workers the real motive for Constant's release was clear even without knowing precisely what had occurred behind closed doors: to shield the CIA's association with FRAPH, the U.S. government needed Constant's silence.

### A "Tell All Autobiography"

"My conscience is clear," Constant told me last October as I met with him in his lawyer's office. When I pressed him about FRAPH murders and rapes, he said that there was no evidence implicating him and that he could not be held accountable for every member of such a sprawling operation. "If somebody the day of the vote killed another individual in the street of New York, and they found he just voted Democrat, they're not going to make Clinton responsible," he said.

He leaned back in his chair, as if trying to think of his next point, and then, as if it had just dawned on him, he pulled out a piece of paper and began to scribble on it. Trying to illuminate the logic of the military regime, he drew a circle in the center and wrote the word "army" inside it. Then he drew two circles orbiting around the first—one marked "the people" and the other "FRAPH." "In Haiti our democratic instrument has always been the army since 1804," he said, pointing to the first circle. "When the people are fed up with the government, it is the army which represents that same populace that overthrows the government. The army is the extension of the people." He said all this without a hint of insincerity. Indeed, he seemed happy to be telling his side of the story, and at the conclusion of this first interview he invited me to his house in Queens, where he was living, as he put it, "like a hostage."

Part of a long row of nearly identical English Tudors in Laurelton, the house looked on the outside like a dump: the façade, once white, was weather-

stained, the front steps needed paint, and the storm window overlooking the porch was shattered. Haitians had told me, among other things, that Constant kept the bones of his victims in his room, practiced late-night voodoo rituals, stored CIA arms in the basement, and shot trespassers. Some people were afraid to walk past the front yard, and one neighborhood kid told me that his friends dared one another to sneak up on the porch and look in the window at night, where they could see "the devil" sitting by himself.

As I hesitated on the stoop, the front door suddenly opened and Constant appeared, holding a cigarette. "Come on in," he said. I followed him into the living room, which was musty and dimly lit, the walls covered with Haitian art, the couches and chairs draped in plastic. Constant sat across from me in a rocker, swaying back and forth as he smoked. He handed me several piles of documents that, he said, established his innocence, including FRAPH speeches, cables between the U.S. embassy in Port-au-Prince and the State Department, and a letter Constant had written to President Clinton. "There's a lot more," he said, "but I've lost a lot of things since I came here."

As I started to ask him questions about his past, he took a tape recorder from his pocket and said that he was working on a book about his life. "I'm in the midst of writing," he said. "I went to take a class about self-publishing your book, and one of the things the guy told me was if you're talking about your past, then record yourself." I thought perhaps he just wanted to make sure I quoted him correctly, but a moment later he showed me a book proposal: "This proposal offers a 'hot' new 'tell all' expose on Emmanuel 'toto' Constant code name 'gamal,' and FRAPH ... The market analysis suggests that with at least 2 million Haitians in the U.S. and at least 50,000 others in the U.S. who have interest in Haiti ... this book could easily sell over 1 million copies." The proposal promised that the book, tentatively

titled *Echoes of Silence*, would serve as a treatise on what Constant called the "poli-military organization." He had even drawn up a dummy book jacket that said,

Emmanuel "Toto" Constant, notorious leader of FRAPH ... and alleged murderer, rapist, and terrorist thug, breaks the yoke of silence. Speaking from his heart, he exposes the real man behind the villainous images. Interesting, provocative, informative and sensitive, *Echoes of Silence* candidly portrays the complexities of life in Haiti, where nothing is simple. It might lead one to conclude: The political frenzy in Haiti, as addictive and dangerous as any narcotic, keeps the masses alive mentally and emotionally even while it kills.

This was Constant's latest attempt to earn a living. Since his release from prison, as I would learn during our talks, he had tried all sorts of ways to set himself up. He had taken computer classes. He had sold used cars. But each time he had found an opportunity, the other Haitian immigrants in the community had risen up and driven him from his job. "I'm a prisoner," he said. And then, "The worst time is when they came in front of the real-estate office ... because I really had a good situation."

Since that day, last August, he had become what he called an "investment consultant," which mostly meant selling and renting properties as covertly as he could. Whenever I was with him, his cell phone rang. Usually he slipped into Creole, but occasionally he'd say things like "I can show you the place tomorrow. No problem. Heat included. Okay. *Au revoir*."

He told me he was concentrating on credit reports, because a lot of Haitians

were unfamiliar with them. "I need to establish some kind of income here," he said.

Once I listened to him raise and lower his voice like an auctioneer: "*Hello. Oui. Oui ...* I saw the apartment ... They were asking one thousand, one hundred dollars, and I'll bring it down to *a thousand ...* Everything is included ... Okay? ... It's Cambria Heights, very nice neighborhood, very quiet, very, very safe ... I'm working very hard for you."

His wife called one day, from Canada, where she had gone with their four children out of fear for their safety. "My wife is leaving me," he said when he hung up, lighting another cigarette. "We're having discussions about the kids. I wanted them to come the way they used to, and she doesn't want them to. So we're having an argument, but everything will be okay."

After a while his phone rang again, and I asked if I could look around the place. "No problem," he said. I headed upstairs, past several cracked walls and closed doors. Constant's room was on the third floor. It was small and cluttered with videos and men's fashion magazines. By his bed was a framed picture of him from his appearance on *60 Minutes*. In one corner was a small shrine. Candles and figurines of Catholic saints, which often play a role in voodoo, were arranged in a neat circle. As I bent down to inspect them, Constant called out my name. One of the statues was the patron saint of justice; on its base was inscribed, "Be ever mindful of this great favor and I will never cease to honor thee as my special and powerful patron." Constant called my name again, and I hurried downstairs. "Let's go out," he said, putting on a leather jacket.

The Haitian community in New York, as in Haiti, is segregated, largely according to class. The poorest Haitians are in Brooklyn, and those of greater wealth and status have fanned out into more-affluent settlements like Laurelton and Cambria Heights. As we walked through Laurelton, I

could smell roasting *griot*, or pork. The sound of *compas*, Haitian dance music, blared from grocery stores. We passed several men smoking in the cold, chatting in Creole. "I need some meat," Constant said, heading toward a butcher shop. The store was packed, and we could barely fit inside. A small circle of Haitians were playing cards in the back. As Constant pressed up against the counter, I realized that everyone was staring at him. "I need some goat," he said, breaking the sudden silence. He pointed at some enormous hind legs hanging from a meat hook. He glanced at the back, where several people seemed to be saying something about him, but he appeared unfazed. The butcher began to cut through the bone and gristle of a goat leg. His thick arm pushed down, slicing in clean strokes. "Everybody here knows who I am," Constant said on the way out. "Everybody. They've all read about me or seen my picture." He darted across the street to a barbershop. A closed sign hung on the door, but he could see the barber inside, and Constant banged on the window, pleading with him to take one more customer. "There's another barbershop down the street," he told me, "but if I went there they'd slit my ..." His voice trailed off as he drew his fingers across his throat and let out a strange laugh.

### A Courthouse in Haiti

The trial was more than a thousand miles away from New York. On September 29 of last year a Haitian court began trying Constant on charges of murder, attempted murder, and being an accomplice to murder and torture—charging him, in effect, with the Raboteau massacre. I went there with J. D. Larosiliere in October, as the trial was reaching its climax. Twenty-two people—mostly soldiers and FRAPH paramilitaries—were being prosecuted in person. Constant and the leaders of the junta were being tried in absentia.

As the last U.S. troops prepared to pull out, the country was, as ever, a

shambles. Although the Clinton Administration's policies had stemmed the bloodshed, success in "nationbuilding" was elusive. Eighty percent of the people were unemployed, and two thirds were malnourished. Gangs still roamed the streets. Drug-running planes took off and landed with impunity. Even the heralded new democratic system was believed to be rife with fraud. Aristide, after having put his protégé René Préval in power, was running for the presidency again amid allegations that he was trying to pack the parliament with his supporters. Political thuggery and assassination, this time from both the right and the left, were beginning to occur again. "Now everyone knows I was right," Constant told me later. "Everyone has seen what has happened under Aristide."

The trial itself was a potential flash point for violence. The U.S. embassy warned Americans to stay away from the area for fear of "large scale demonstrations, tire burnings, rock throwing and worse." As our plane landed, Larosiliere told me that he had been warned about potential assassination attempts. "If they attack me, it will only help me prove my case," he said. "If I'm not safe, then how can my client be safe?"

At the airport we met a large man with mirrored sunglasses and a military bearing, who would serve as Larosiliere's "attaché." "You cannot depend on the police to have security," the attaché told me. "So you need to be armed to protect yourself." The attaché pushed our way through a crowd of taxi drivers, bag handlers, beggars, and pickpockets. I smelled flesh and sweat and food, and as we rushed to the car, I tried to deflect the arms outstretched to help me with my things. "Welcome to Haiti," Larosiliere said.

The city of Gonaïves, where the courthouse was located, is only seventy miles from Port-au-Prince, but it took us half a day to get there. Nearly all the roads in Haiti are unpaved. The Americans started to build a paved road

after the invasion, but they gave up and the road now ends abruptly on the edge of a slum. We rumbled past Aristide's new estate on the outskirts of the capital, where he increasingly secludes himself; past the old Club Med, abandoned since 1999, along with almost all the other tourist sites; past irrigated plains where peasants rolled up their pant legs to wade through fields of rice. Then we headed north, past arid, desolate land where nothing seemed to grow but cacti, until we came upon Gonaïves.

The courthouse was in the center of the city, surrounded by tractor-trailers—a makeshift barricade to prevent mobs from rushing in. We entered a small, squat building, where armed guards searched us for weapons; the attaché told me he had left his gun behind, but he stayed close to Larosiliere's side. We passed through one room and then another; finally, to my surprise, we headed into an open courtyard, where the trial was being held under a billowing white canopy. The judge sat at a table, wearing a black robe and a tall hat with a white band. He had a bell in place of a gavel. To one side of him, sitting in neat rows, were the prosecution and the jury; to the other side were the defense and the twenty-two accused, behind a cordon of armed guards. Larosiliere joined the defense, and the attaché and I sat at the end opposite the judge, with the scores of observers and alleged victims.

I had barely sat down when a lawyer for the prosecution began to scream at Larosiliere, jabbing his hand in the air and demanding that Larosiliere tell the court who he was and why he was there. The attaché, who had been at my side, was on his feet before Larosiliere answered. The crowd filled with murmurs: "*Toto Constant! Toto Constant!*" People looked around as if Constant might be under the canopy. The lawyer began to bark again at Larosiliere; the attaché now stood by Larosiliere's side, his arms crossed on his chest.

Most of the alleged victims had already testified that on April 22, 1994, soldiers and FRAPH members had descended on the village of Raboteau, known for its staunch support of Aristide. They described being driven from their homes, forced into open sewers, robbed, and tortured. In past attacks the villagers had fled to the sea, where their fishing boats were tied up. But when they did so this time, they said, the attackers were waiting for them in boats and opened fire. "In order to escape ... I took to the sea," one of the villagers, Henri-Claude Elisme, had said in a sworn deposition. "I climbed aboard my boat; I saw Claude Jean ... fall under the soldiers' bullets." Abdel Saint Louis, a thirty-two-year-old sailor, said, "I fled ... into a boat. At sea I saw another boat arrive. Thinking they were people trying to escape, I came closer to them. I then saw Youfou, a FRAPH member, piloting a group of soldiers. They fired in my direction. I called for help. They arrested me, beat me, and forced me to guide the boat. Seeing other people in a boat, the soldiers fired in their direction and hit two girls: Rosiane and Deborah."

By the end of the assault, according to the prosecution witnesses, dozens of people were wounded and at least six were dead; the prosecution estimated that the actual toll was much higher. Most of the bodies had allegedly been buried in shallow graves along the sea and either eaten by animals or washed away. "When I went down to the shore I saw [my brother's] boat covered in blood," Celony Seraphin testified. "I only found him on April 28 ... tied up with Charité Cadet; both had been murdered. I was not authorized to remove the body ... I demand justice for my brother."

The testimony occasionally elicited angry shouts from the spectators, and the judge would ring his bell, trying to quiet the courtyard. That afternoon Karen Burns, a forensic anthropologist from the United States, was sworn in. A Canadian expert on DNA was scheduled to follow her. It would be the first time that forensic evidence and genetic evidence were introduced in a Haitian court, and the courtyard fell silent. Burns stood in the center of the

gathering, surrounded by the skeletal remains of three people, excavated from the edge of the sea in Raboteau in 1995. As she spoke, spectators and jurors craned their necks to look at the bones. Burns held up one and said, "This is the pelvis right here." She put it down and picked up another bone. "This individual was found with a rope tied around his neck, and this is the rope that was retrieved." As she held up the rope, there were several gasps.

Larosiliere—who, like his client, maintains that the massacre was fabricated as propaganda to discredit FRAPH and the military regime—remained unimpressed. "I live for testimony like this," he told me that night, drinking a glass of rum, as we sat with the attaché at the hotel restaurant. "It's bullshit. Come on! [This wouldn't be allowed] in an American courtroom with the federal rules of evidence! She did a scientific study on a site with no integrity. Everyone and everybody walked around it. Come on. You know I can go to graveyards and pick up skeletons from anybody and put them down."

Refilling his glass, Larosiliere said that the prosecution's entire case was preposterous. If there had been any organized military involvement at all, he said, no evidence would have been left on the beach. "Those bodies would be put on a truck, and they'd be taken out on the Rue Nationale—"

"You got it," the attaché agreed.

"—or the highway—"

"At night," the attaché added.

"—and dumped into—"

"The Source Puante," the attaché said.

"Sulfur ditches," Larosiliere explained. "The best place, because the sulfur

eats the body."

As he spoke, several international human-rights observers sat down next to us. They stared at Larosiliere, whom they recognized from the courtroom. His voice seemed to grow louder as he noticed them. Finally one of them began to argue with him about Constant. "If for one instant, sir, I believed that Haiti could sustain a true trial for my client, I'd be the first one to throw him on the plane," Larosiliere said.

Later I asked Brian Concannon, an American human-rights lawyer who had spent most of the previous five years in Haiti spearheading the trial, if he thought Larosiliere's concern about the fairness of the tribunal was legitimate. Concannon said he thought it was not. He told me that the judicial system, which had received more than \$25 million in American aid for reform, had slowly and steadily evolved in recent years. The judge and one of the prosecutors, for instance, had gone through a training program funded in part by the United States; another prosecutor had gone to France, where he studied at a judicial academy. Concannon said that although it had taken years to accomplish, the trial was extraordinarily fair by any standard. Indeed, he said, it had become a kind of prototype for the judicial system in Haiti. Perhaps most important, despite fears by Constant that he would be killed, not a single defendant so far had been harmed in prison or in a courtroom. "The defendants were given the benefit of all their rights under Haitian law and under international treaties to which Haiti is a party," Concannon said. "They were allowed to present witnesses, alibis, and exculpatory evidence."

**From *Atlantic Unbound*:**

[Flashbacks: "Nuremberg Revisited"](#)  
(November 1995)

As for Constant, Concannon said, the case was based on the same legal precedent used to prosecute Nazi leaders after World War II and, more

Two articles from 1946 consider the precedent set at Nuremberg.

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recently, war criminals in Yugoslavia and Rwanda. "Constant started an organization that was specifically designed to [carry out]—and in fact carried out—massive violations of human rights," he said. "Constant then provided that organization with training, money, and weapons. He has liability as a commander. It was the same with Nuremberg. He was in charge of a criminal organization and is responsible for the crimes of that organization." Though there was no evidence that Constant had been on the scene at Raboteau, Concannon said, there was indisputable evidence that FRAPH members participated in the attack and systematically terrorized the community. And, he said, there was probably more evidence against Constant in the thousands of pages of secret documents confiscated by U.S. soldiers in their 1994 raid on FRAPH headquarters, documents the Clinton Administration had so far refused to return to Haiti—fueling allegations that Washington was trying to conceal its ties to FRAPH and Constant.

On the second day of our visit Larosiliere decided to stage a protest. In the middle of the proceedings he rose from his chair and stood stiffly in the courtroom. The trial came to a halt, and everyone stared at him. Then he marched out the door, the attaché a few feet behind him. There was an angry chorus of murmurs. A prosecution lawyer denounced the move as merely a ruse, a sign that Constant's lawyer had intended from the outset not to use the tribunal for justice but only to discredit it. ("My understanding of an adequate murder defense is that you spend more than a few hours at the trial," Concannon told me. "We've worked on this case full-time for four and a half years.") After Larosiliere left, I sat for a while and stared at the dozens of alleged victims sitting on the back benches. Many of them had bought suits for the trial. The young women, some of whom had been shot, wore white dresses that somehow stayed pristine in

the dusty heat; they sat with their backs perfectly straight. On several occasions these people had walked miles to the capital to pressure their government for justice. They had written songs about what had happened. And they sat there now, as rain began to fall, and as a clerk collected the bones strewn on the table, and as rumors filled the country that another coup attempt had been thwarted in the capital. As I finally rose to go, a young man who had seen me arrive with Constant's lawyer stopped me; before I could say anything, he spat at my shoe and walked away.

### The Verdict

"They tried to get me to come out to beat me up," Constant told me shortly after I returned. He was eating a piece of chocolate cake in a Queens diner. Tensions in the community had intensified since the beginning of the trial. Larosiliere had told him to leave the house during such demonstrations, to avoid confrontations. But Constant always remained nearby. "I have to protect my mother and aunt in case one of them go crazy," he told me. Ricot Dupuy, of Radio Soleil d'Haiti, told me candidly, "There are Haitian groups who have toyed with the idea of taking the law into their own hands and killing him." Constant claims he has a small coterie of supporters who keep an eye out for him. "I can tell you, when they come in front of my place, fifty percent of the people out there are my people," he said. "They pass by in case there is any trouble."

Though it is hard to know the precise numbers, Constant maintains some hold over a small following of former FRAPH members, Tonton Macoutes, soldiers, and Duvalierists who also live in exile. Demonstrators say that in at least one instance a car showed up outside his house to monitor them.

"They came by taking pictures of us, and we took pictures of them," Ray Laforest told me.

"I don't want to play a deadly game," Constant said of Laforest, "but I have

stuff on him, and ..." He let his thought trail off.

One day I was sitting with Constant in his house, reading a copy of his book manuscript. Someone had helped him write the first few chapters.

My media image, both internationally and in the U.S., has been a source of anguish for me. Topics that suggest my alleged involvement with the CIA, being a human rights abuser, operating "voodoo politics," being a bogeyman, making Haiti "a place of fear," being a "tough guy," a "gunman," "dog," an "attaché," and, last but not least, a "spook," an "S.O.B." and a "double spy" have been a source of wonderment about why I have been so suddenly accused in the media.

As I was reading, the phone rang in the kitchen. Constant went to it, and I could hear him speaking in Creole. A moment later he walked back into the room. "You're here for a part of history," he said. "The verdict came out. I've been sentenced to life imprisonment and to hard labor, and they're taking over all my property in Haiti."

He dropped into his rocking chair, looking around the room. He lit a cigarette and rocked back and forth. Apparently the jury had deliberated for four hours and had found sixteen of the twenty-two defendants in custody guilty, twelve of them for premeditated murder or being accomplices to murder. All those in absentia were convicted of murder and ordered to pay the victims millions of dollars in damages. "I hate to lose my things back home," Constant said, "because eventually my mother has to go back there." He lit another cigarette and pulled on it deeply. "I better call J.D.," he said, referring to Larosiliere. He picked up his cell phone, trying to

concentrate. "They have a verdict against me," he said into the phone, leaving a message for his lawyer. "I need to speak to him. Okay? They have sentenced me to life and hard labor!"

A few minutes later the phone rang, and Constant picked it up in a hurry. But it was a reporter asking him for a comment. He stumbled through something and hung up. The phone rang again. It was Larosiliere. "What do you think's going to happen here?" Constant asked nervously. "Okay ... yes ... *okay*."

He handed me the phone. I could hear Larosiliere's voice crackling through the receiver before I put it to my ear. "I have one word to say about all this: bullshit." Larosiliere said that the Haitian government would now try to extradite Constant, claiming that a legitimate tribunal had convicted him with the blessing of international observers. But, he said, they still had to show that the verdict was fair and prove in a U.S. court that Constant deserved to be sent back. It is important to point out that under Haitian law, if Constant surrenders or is arrested, he will have the right to a new trial.

Constant called me a few days later. His voice was agitated. "There are all these rumors out there that they're about to arrest me," he said, "that they're coming for me." He said he had to check in with the INS the following day, as he did every Tuesday, but he was afraid the authorities might be planning to seize him this time. "Can you meet me there?"

By the time I arrived at the INS office in Manhattan the next morning, he was already standing by the entrance. It was cold, and his trench coat was wrapped around him. He told me that his mother, who was in Florida, had called to tell him that other Haitian exiles had been arrested. I could see circles under his eyes. Pacing back and forth, he said that he had stayed at a friend's house the night before, in case the authorities showed up at his house to arrest him.

I followed him into the elevator and up to the twelfth floor. The room was filled with immigrants. Constant tried to check in at the front desk, where a poster of the Statue of Liberty hung, but the woman there said they weren't ready for him yet. He sat down and started to ponder why he had been kept free for so long. "This is what I'm trying to find out and that nobody has been able to analyze it with me. Why are they keeping me alive? I don't know why, in fact. A friend of mine told me one day, he works for intelligence here, and he said there is somebody, somewhere, that is following everything about me, every court paper, every legal action, every immigration matter, and this is the only person that really knows why they are keeping me alive."

A few minutes later someone yelled out his name, and he leaped to his feet. He approached the desk with his INS form and checked in, as always. The woman took the sheet of paper and walked into a back room, where she consulted with somebody. Then the woman returned and, just like that, Constant was smiling, leading me to the elevator, calling his mother to say he was okay, and rushing across the street to buy a new suit in celebration of his freedom.

The next week two dozen Toto Watchers gathered outside the INS carrying signs that showed alleged FRAPH victims: a murdered boy with a shirt pulled over his head; two men lying in a pool of blood. "We are here to demand that Toto Constant be sent back to Haiti to stand trial for crimes against the Haitian people," Kim Ives, a writer for the Brooklyn-based newspaper *Haiti Progrès*, yelled through a bullhorn. "If you're opposed to war criminals and to death-squad leaders living as your neighbors in New York City, please join us." Human-rights activists began to join the protesters. There was a sense that this was the last chance to persuade the U.S. government to send Constant back to Haiti—that if it wouldn't do so now, after the conviction, it never would. A UN expert on Haiti, Adama

Dieng, who had served as an impartial observer at the trial, had already called the verdict "a landmark in [the] fight against impunity," and in one of the last moves of the Clinton Administration, according to two U.S. officials, the documents confiscated during the raid on FRAPH headquarters had been sent back to Haiti. So far the files have not been made public, but they may contain more evidence of FRAPH's crimes and could add to the case for Constant's extradition. Still, most activists remain skeptical. Brian Concannon told me after the trial, "The presence of such a horrible killer in the U.S. shows that the U.S. supports those activities. There is, unfortunately, no other credible explanation."

Outside the INS office several in the crowd were bent over, trying to light candles in the freezing wind. "How can they not send him back?" a Haitian man asked me. "He has been found guilty by a Haitian court. Why is the CIA protecting him?" Suddenly there was a loud, unified chant from the crowd: "Toto Constant, you can't hide! We charge you with genocide!"

#### Au Revoir?

At one of our last meetings, after Jean-Bertrand Aristide and George W. Bush had each been sworn in to their respective offices, Constant called and said he had to see me. His legal status remained unchanged. He had been talking to his "advisers," he said, and he needed to tell me something. The political terrain had shifted in both countries, he said. There was more and more resistance to Aristide, even in Queens. Bombs had recently exploded in Port-au-Prince, and the regime had blamed Constant. He denied any role, but he said that Haitians from all over were calling, waiting for him to act, to step up.

At the Haitian restaurant where we met, he told me that people had "been publishing articles, and they say, 'Look at this guy who has been convicted for murder in Haiti and he's getting stronger and stronger every day.'" He

sipped a glass of rum. "A lot of people in Haiti are watching me. They haven't heard from me. They don't know what's going to happen, but everyone has their eyes on me, and people are sending me their phone numbers from Haiti. People here try to reach me. Political leaders are trying to reach me. There is a perception that if ... Aristide is on the go, *I'm* the only one that can step in. I can't let that thing get to my head. I have to be very careful and analyze it and make it work for me."

As people entered the restaurant, Constant looked over his shoulder to check them out. He waited for two Haitian men to sit down, and then he turned back to me and said that he had to do something dramatic or he would be a hostage in Queens for the rest of his life. "If I stand up and make a press conference, and even if I don't say anything but I just attack Aristide, that's going to give strength to the opposition down there, that's going to give strength to the former military, that's going to give strength to the former FRAPH members, that's going to give strength to everyone who didn't have the guts because they didn't see who would take the lead." He had recently received a new spate of death threats, he said. Someone had gotten hold of his cell-phone number and had warned, "I'm going to get you no matter what you do." I asked if he was afraid of what might happen if he so brazenly broke his gag order and called a press conference. He said that he wasn't sure what would happen, but it was his destiny. "I've been prepared since young for a mission, and that's why I've stayed alive," he said. He glanced over his shoulder again, and then he leaned toward me. "I'm either going to be President of Haiti," he said, "or I'm going to be killed."

# EXHIBIT

9

COUNTY COURT: KINGS COUNTY

-----X

THE PEOPLE OF THE STATE OF NEW YORK :

-against-

EMMANUEL CONSTANT

Defendant.

Attorney General

Indictment No.

8206 2006

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**DECLARATION OF BRIAN E. CONCANNON, JR., ESQ.**

**DECLARATION OF BRIAN E. CONCANNON, JR., ESQ.**

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

1. I am the Director of the Institute for Justice & Democracy in Haiti (IJDH) and a member of the Massachusetts Bar. IJDH documents human rights violations in Haiti, and pursues human rights cases in Haitian and international courts.

2. I lived and worked in Haiti from May 1995 until February 2004. In 1995 and 1996, I worked for the United Nations/Organization of American States Civilian Mission to Haiti, as a Human Rights Observer. From 1996 to February 2004, I co-managed the *Bureau des Avocats Internationaux* (International Lawyers Office, or "BAI"). The BAI, which received most of its support from Haiti's elected governments, helped victims and the justice system prosecute human rights cases. The BAI's work, especially the trial of the Raboteau Massacre in the fall of 2000, was internationally recognized as a landmark in the fight against impunity.

3. From 2001 to 2003, I held a Brandeis International Fellowship in Human Rights, Humanitarian Intervention and International Law, and I was a 2005-2006 Wasserstein Public Interest Law Fellow at Harvard Law School. I am fluent in French and Haitian Creole.

4. Through my work with the United Nations and the BAI in Haiti, I became intimately familiar with Haiti's laws and Constitution and the capacity of its police force and courts to enforce the laws and to respond to large-scale violations of human rights. I have authored or co-authored several reports and analyses on the current human rights situation in Haiti. I last visited the country in March 2007, and remain in daily email and telephone contact with colleagues in Haiti, especially the BAI staff in Port-au-Prince.

5. I am regularly consulted by U.S. Government officials, human rights organizations and journalists regarding human rights and legal procedure in Haiti. I write frequently on human rights and law in Haiti, including book chapters and articles in academic journals and newspapers. I speak frequently about human rights in Haiti at law schools, universities and conferences, and am regularly interviewed for radio programs throughout the world.

6. One of my responsibilities with the United Nations was monitoring the Haitian justice system's ability to prosecute cases of large-scale human rights violations from the 1991-1994 *de facto* dictatorship. I regularly met with judges, lawyers, prosecutors and victims, and observed trials and pre-trial proceedings.

7. The BAI's principal mission was to help advance the prosecution of large-scale human rights violations from the *de facto* dictatorship. At the BAI, I worked on a daily basis with Haitian lawyers and victims of human rights violations, and regularly with Haitian police, prosecutors, judges, and top officials, including Presidents and the Ministers of Justice. I also worked regularly with officials from the United Nations and the United States government.

8. The BAI felt it was important in its cases to pursue the chain of command up to the leaders who might not have been at the scene of the crimes, but who ordered, incited or otherwise supported the attacks against unarmed civilians. This included the military officers at the top of the army chain of command, but also the paramilitary leaders, such as Emmanuel Constant, the founder and leader of FRAPH (Revolutionary Front for the Advancement of the Haitian People).

9. We pursued the top leaders through the courts, and our work helped obtain *in absentia* convictions for the entire military High Command, as well as for Mr. Constant and his second-in-command at FRAPH, Louis Jodel Chamblain.

10. The top leaders were all convicted *in absentia* because they had fled Haiti, but the BAI worked to bring them back to face justice. Many of them, including Mr. Constant, were in the U.S. at the time we started pursuing them in 1996. I personally worked with many officials of the U.S. government, in Haiti, Florida and Washington, to help obtain these men's return to Haiti. This collaboration bore significant fruit: three members of the High Command who had been convicted *in absentia* in our cases, Colonel Carl Dorelien, Colonel Hebert Valmond and Major General Jean-Claude Duperval, were deported to Haiti between 2001 and 2003. Major-General Duperval is, to my knowledge, the highest-ranked military officer ever deported from the United States to face human rights charges.

11. We pursued the return of these men because we felt that that the Haitian justice system could effectively and fairly prosecute them, and could provide adequate safety in detention. The Raboteau trial, which received international recognition as fair to defendants and victims alike, demonstrated the courts' ability to try those cases. The safe detention of the three High Command members, until their escape in 2004, showed that the penal system could safely hold high-level prisoners.

12. We tried just as hard, and for a longer time, to obtain Mr. Constant's return to Haiti. At first, we thought his case would be the easiest. Mr. Constant was ordered deported in 1996, in part on the basis of an affidavit of Secretary of State Warren

Christopher that Mr. Constant's presence in the U.S. was inimical to U.S. interests. Human rights groups and the media frequently called for his deportation.

13. But we never succeeded in obtaining Mr. Constant's return. U.S. officials provided varying explanations for failing to execute the deportation order, but the most frequent justification was that they felt that Mr. Constant's safety would be at risk if he were returned to Haiti.

14. I understand that the U.S. government has reported that the Haitian government has said that it will prosecute Mr. Constant if he were returned to Haiti. I believe that the current Haitian government has a commitment to the rule of law- the current President, and many of his top current judicial officials were instrumental in the success of the 2000 Raboteau Massacre trial- and expect that the government would work hard to ensure that Mr. Constant's rights are respected throughout the process. But I fear, for the reasons outlined below, that the Haitian justice system may not be able to effectively prosecute Mr. Constant at this time.

15. I believe that the interests of justice, in both Haiti and the U.S., would be best served if Mr. Constant served the maximum possible sentence in the United States, before being deported to Haiti for judicial proceedings. Serving time in the U.S. will guarantee that Mr. Constant does in fact pay a price for his crimes, but it will also provide the Haitian justice system more opportunity to recover from the compromises made by the unconstitutional Interim Government of Haiti (IGH), and strengthen its capabilities to the point where it will be able to once again handle a case of this magnitude.

## **HAITI'S LEGACY OF DICTATORSHIP HAS LED TO A WEAK JUDICIARY**

16. The Haitian justice system has long been plagued by widespread corruption, a legacy of over two centuries of dictatorships in Haiti.

17. The system's transition to a more functional and democratic system during Haiti's democratic interlude (1994-2004) was slow and frustrating, but also steady.

18. But following the forced departure of Haiti's elected government in February 2004, and the installation of the Interim Government of Haiti (IGH), the justice system went into a sharp decline. Many of the newly trained and competent judges were pushed out, illegally, and replaced by judges willing to follow the dictates of the executive branch. Although democracy was restored to Haiti in May, 2006, one year ago, with the inauguration of an elected President and legislature, the justice system has not recovered from this decline.

## **THE JUDICIAL SYSTEM HAS NOT RECOVERED FROM THE INTERIM GOVERNMENT OF HAITI**

19. The unconstitutional IGH that governed Haiti between March 2004 and May 2006 regularly pushed out judges willing to uphold the rule of law and replaced them with IGH supporters. The most spectacular example of this interference with the independence of the judiciary, in December 2005, has been dubbed "the Friday Night Massacre." The Prime Minister fired and replaced half of the Supreme Court after the Court ruled against the IGH in a controversial case. Both the firings and the executive's unilateral naming of replacements were as unconstitutional in Haiti as they would have been in the United States.

20. There have been other incidents as well, especially at the trial court level. The investigating magistrate who wrote the *ordonnance* –analogous to an indictment in the U.S.- setting forth the charges against Mr. Constant in the Raboteau Massacre case was pushed off the bench by the Minister of Justice in late 2004.

21. Most of those replacement judges are still on the bench.

22. The Raboteau case is a strong example of the politicization of the justice system under the IGH. There were two types of convictions at the trial: 1) the sixteen defendants who were in the courtroom, who, after a full defense, were convicted by a jury and sentenced by the judge; and 2) thirty-seven defendants convicted and sentenced *in absentia*, by a judge. *In absentia* defendants do not have the right to present a defense, but are allowed a re-trial, with no presumptions from the *in absentia* conviction, if they return to Haiti.

23. The in-court convicts in the Raboteau case appealed shortly after the November 2000 jury decision. At the time, the prosecutors and lawyers for the victims felt that the grounds they advanced were weak. But as time passed without the *Cour de Cassation*, Haiti's supreme court, deciding the appeal, we became worried. We initially feared that the convicts' rights were being denied, but after our repeated, unsuccessful efforts to convince the court to hear the appeal, we began to fear that the appeals were being delayed until the next coup d'etat, when the convicts could escape.

24. Those fears now appear well-justified. The *Cour de Cassation* never heard the appeal for three years. After the February 29 coup d'etat, the Court's President was installed as President of the country. By March 1, 2004, every person in jail for Raboteau had escaped. Subsequently, the IGH's judiciary dismantled the Raboteau decision.

25. First the *Cour de Cassation* overturned the convictions of the in-court convicts, on the grounds that the case had been improperly submitted to a jury. The defendants had not even cited the jury issue as a ground for their appeal, and the *Cour de Cassation* had affirmed the document setting a jury trial when it decided a pre-trial appeal in 2000. Second, even though the *in absentia* defendants had not been before the jury, some judicial officials used the reversal of the jury verdict as an excuse to exonerate *in absentia* convicts, including Jodel Chamblain of FRAPH and Carl Dorélien, a colonel and member of the military dictatorship.

**EMMANUEL CONSTANT'S CO-DEFENDANTS ARE NOT BEING PURSUED**

26. Mr. Constant's co-defendants in the Raboteau trial are in a similar legal situation, and are not being pursued by authorities in Haiti. Colonels Dorelien and Valmond and Major General Duperval all remained in prison under the elected governments, from their deportation from the U.S. until the February 2004 coup d'etat. They were offered the right that Haitian law guarantees to all *in absentia* defendants to a new trial with no presumptions of guilt. They declined to exercise that right, preferring to stay in prison. I feared at the time that they were waiting for a coup d'etat, which would install a government willing to let them out and annul the judgment.

27. In February 2004, Haiti did have a coup d'etat, and the three escaped prison, along with the 10-12 remaining defendants convicted in person in the Raboteau massacre. None have been returned to prison to my knowledge.

28. Louis Jodel Chamblain, the second in command of FRAPH after Mr. Constant, was a leader in the attacks that led to the February 2004 coup d'etat. Mr.

Chamblain, as well, is out of prison. The IGH, under pressure from human rights groups to prosecute Chamblain, arrested Chamblain in 2004, and held a legal proceeding that was widely considered a sham and resulted in his exoneration. Mr. Chamblain even ran for the national legislature in the February 2006 elections.

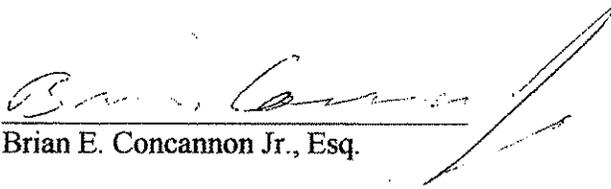
29. I am not aware of any efforts to pursue any of the Raboteau defendants, either those convicted *in absentia* or those convicted in court by a jury.

30. Because the Haitian justice system is weak and compromised, and still has a long way to go to successfully transition from the compromises to its integrity and independence imposed by the IGH, I believe that the system would struggle to effectively prosecute any high profile complex human rights case right now. The fact that other people convicted, like Mr. Constant, *in absentia* in the Raboteau massacre case have not been pursued by the justice system makes me believe it is particularly unlikely that Mr. Constant will receive the kind of trial that his victims deserve.

31. I think it is vitally important, for both the U.S. and Haiti, that Mr. Constant be returned to Haiti to face justice. But I believe an effective prosecution will be much more likely if the Haitian justice system is given time to rebuild itself. I fear that if Mr. Constant is deported to Haiti right now, he will continue to evade justice in the same manner as his co-defendants and colleagues from the military dictatorship.

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

Executed on this 18<sup>th</sup> day of May, 2007, in Joseph, Oregon.

  
Brian E. Concannon Jr., Esq.

# EXHIBIT

10

# HAITI 2014 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Haiti is a constitutional republic with a multi-party political system. President Michel Martelly took office in 2011 following a two-round electoral process that, despite some allegations of fraud and irregularities, international observers deemed generally free and fair. The government did not hold partial Senate and local elections, delayed since October 2011, because of a continuing impasse between the executive, legislative, and judicial branches over the proper procedures to establish and organize elections. Authorities maintained effective control over the security forces.

The most serious impediments to human rights involved weak democratic governance in the country; insufficient respect for the rule of law, exacerbated by a deficient judicial system; and chronic corruption in all branches of government.

Other human rights problems included the following: isolated allegations of arbitrary and unlawful killings by government officials; allegations of use of force against suspects and protesters; overcrowding and poor sanitation in prisons; prolonged pretrial detention; an inefficient, unreliable, and inconsistent judiciary; governmental confiscation of private property without due process; rape, violence, and societal discrimination against women; child abuse; allegations of social marginalization of vulnerable populations; and trafficking in persons. Allegations persisted of sexual exploitation and abuse by members of the UN Stabilization Mission in Haiti (MINUSTAH), although to a lesser extent than in previous years. Violence, including gender-based violence, and crime within the remaining internally displaced persons (IDP) camps, which contained approximately 85,000 IDPs as of September, remained a problem.

Although the government took steps to prosecute or punish government and law enforcement officials accused of committing abuses, credible reports persisted of officials engaging in corrupt practices, and civil society groups alleged that impunity was a problem.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

#### **a. Arbitrary or Unlawful Deprivation of Life**

There were isolated allegations of police and other government officials' involvement in arbitrary or unlawful killings. Some of these resulted in arrests; however, none resulted in convictions.

Human rights activists and some members of parliament alleged that members of the Haitian National Police's (HNP) Departmental Unit for Maintenance of Order (UDMO) killed Fanmi Lavalas activist Fritz Gerald Civil in April. Following weeks of protests demanding potable water, electricity, and the reduction of tariffs in the port of Miragoane, customs officials denied entry to an unidentified ship suspected of carrying weapons destined for persons associated with the Fanmi Lavalas party. On April 4, Civil led demonstrators to the port in protest. The HNP responded, arresting seven associates of Civil. Civil escaped but was later found dead near a public beach. Following Civil's death, Lavalas sympathizers demanded the perpetrators' arrest and prosecution; however, the local investigating magistrate did not find evidence of criminal activity on the part of the HNP.

In July police and firefighters brutally beat a mentally ill resident of Croix Desprez, who died three days later. Unable to persuade Wilson Rock to get out of a hole at a construction site of his own volition, law enforcement poured bleach into the hole, making it difficult for Rock to breathe. Firefighters then brought him to the surface by offering a rope. Amateur video images showed that, once he was on the surface, police began beating the handcuffed victim, with his face against the ground and his feet tied with rope. The HNP's Office of the Inspector General (OIG) placed eight of the 12 police officers and firefighters present on administrative leave pending an investigation. As of September the OIG recommended that the HNP Directorate General dismiss four officers and suspend the other four.

There were no further developments in the 2013 killing of Fenol Preval by Cite Soleil mayoral private security officials, or in the 2013 killings of Civil Merius, Serge Demosthene, and Rolcy Ametis, in which the HNP was implicated. There were no prospects for further developments in the 2013 investigation launched by Judge Wilner Morin into the killing of HNP officer Walky Calixte, who was shot and killed by assailants as he was leaving his home in Martissant days after he had arrested then deputy Rodriguez Sejour's nephew on suspicion of illegal arms possession.

## **b. Disappearance**

There were no reports of politically motivated disappearances by government agents during the year.

Allegations of current and former HNP officers' alleged involvement in kidnappings persisted. Nevertheless, through September the number of kidnappings decreased 80 percent compared with 2013. International and domestic authorities credited the decline to the increasing effectiveness of the HNP's antikidnapping unit.

The six HNP officers imprisoned for their involvement in the high-profile Clifford Brandt kidnapping ring remained incarcerated. While their lawyers successfully argued for their release on technicalities, the government appealed the ruling, and the detainees remained detained pending review from the high court.

### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The law prohibits such practices; however, there were several reports from international and domestic nongovernmental organizations (NGOs) that members of the HNP allegedly beat or otherwise abused detainees and suspects. Prisoners at times were subject to degrading treatment, in large part due to overcrowded facilities. Several reports noted corrections officers used physical punishment and psychological abuse to mistreat prisoners.

In March, during demonstrations in Jacmel, HNP officers allegedly shot and injured two persons. Prosecutors requested that the HNP department director present the officers involved to the court, but authorities took no further action.

In August human rights groups reported that private security officers of the Speaker of the Chamber of Deputies, Jacques Stevenson Thimoleon, and Deputy Jean Rene Lochard, beat an HNP officer who attempted to join the parliamentarian's private party held in a Petit Goave nightclub. According to several accounts, Lochard struck the officer first and ordered him handcuffed. A few hours later, Thimoleon's security released the officer but took his service weapon and badge. The next day the officer had to travel to Thimoleon's home to recover his badge and gun but not before signing a prepared statement in which the officer agreed not to sue security guards who beat him.

During the August celebration of the festival of Notre Dame in Petit-Goave in a nightclub, HNP Mobile Intervention Brigade and UDMO officers responded

violently when revelers threw empty plastic bottles at a patrol vehicle. UDMO officers' use of tear gas and physical beatings injured more than 30 persons. An OIG investigation was in progress, and, as of September, two officers were suspended pending review.

While allegations persisted that MINUSTAH soldiers were involved in incidents of sexual abuse and exploitation, the number of incidents reportedly decreased from 2013. UN officials attributed the decline from 17 allegations in 2013 to five as of July in part to their efforts to combat the problem, and they highlighted a zero-tolerance policy that included training, awareness raising, and enforcement.

In June a court in Les Cayes sentenced a police officer found guilty of the rape of a 15-year-old boy in 2013 to 10 years' imprisonment. The human rights organization GADES (Groupe d'Appui au Developpement du Sud) accompanied the victim and provided legal support throughout the judicial process. Following the judgment members of GADES received numerous threats. The police officer's lawyer publicly threatened GADES' coordinator in court, stating members of the group would face repercussions for his client's incarceration. According to testimonies received by Amnesty International (AI), police needed to intervene to maintain order in the court. At least three GADES members received anonymous threatening calls on their private telephones. GADES filed complaints with the police and the Office of the Public Prosecutor in July but were unaware of any investigation by the public prosecutor into their complaints, nor had the organization received any protection from the authorities as of October.

### **Prison and Detention Center Conditions**

Prisons and detention centers throughout the country remained overcrowded, poorly maintained, and unsanitary.

Physical Conditions: Prison and detention center overcrowding was severe, especially in the National Penitentiary; the Petionville women's prison; the Petit-Goave jail; and the prisons in Jeremie, Les Cayes, Port de Paix, and Hinche. Only the newly constructed prison in Croix des Bouquets conformed to international norms and was not significantly overcrowded, albeit already slightly over capacity. Others, including the detention facilities in Port-au-Prince, Cap Haitien, Fort Liberte, Mirabalais, Jacmel, Hinche, Les Cayes, Anse-a-Veau, and Port de Paix, exceeded the UN's prescribed capacity of 2.5 square meters (27 square feet) per inmate. In some prisons detainees slept in shifts due to lack of space. Some prisons had no beds for detainees, and some cells had no access to sunlight. In

others the cells often were open to the elements and lacked adequate ventilation. Many prison facilities lacked basic services such as plumbing, sanitation, waste disposal, medical services, potable water, electricity, and isolation units for contagious patients. A newly operational sanitation block in the Les Cayes prison contained nine showers and 10 toilets serving a population of 572 inmates as of October. Some prison officials used chlorine to sanitize drinking water, but in general prisoners did not have access to treated drinking water.

International observers indicated prisoners and detainees continued to suffer from a lack of basic hygiene, malnutrition, poor quality health care, and water-borne illness. An estimated 10 percent of the prison population suffered from malnutrition and severe anemia, while sanitation-related diseases, including scabies, diarrhea, and oral infections, were commonplace across the inmate population. In several prisons the Department of Corrections (DAP) and the International Committee of the Red Cross (ICRC) provided personal hygiene kits; in many others, inmates' families provided them. Because of the poor security, severe understaffing, and conditions of some detention centers, some prisons did not allow prisoners out of their cells for exercise. From October 2013 to July, DAP authorities recorded 44 inmate deaths across the West Department, which includes the large National Penitentiary and Croix-des-Bouquets sites, as well as the Petionville women's facility and Delmas 33 juvenile facility. The majority of deaths were due to heart failure, severe anemia, and strokes, although five were due to HIV/AIDS and three to tuberculosis.

While some detention facilities contained clinics for treatment of illnesses and diseases contracted while in custody, many did not. Few prisons had the resources to treat serious medical situations. In some prisons the incidence of HIV/AIDS and malaria remained a serious problem, although the programs of several NGOs, international organizations, and donor countries continued to reduce the incidence of these diseases. Other common medical problems in prisons included scabies, beriberi, and a small number of cases of confirmed drug-resistant tuberculosis. The National Penitentiary and Cap Haitien prisons experienced small-scale outbreaks of cholera early in the year, affecting approximately 50 prisoners. Both outbreaks were quickly contained but resulted in two prisoners' deaths.

Prison conditions generally varied by inmate gender. Female inmates in coed prisons enjoyed proportionately more space in their cells than their male counterparts, but women at the Petionville women's prison, like men at mixed-gender prison facilities, occupied less than 11 square feet of cell space per person. Female prisoners also enjoyed a better quality of life than did their male

counterparts due to their smaller numbers, which wardens suggested was a contributing factor to their ease of control. Access to water and adequate plumbing was a problem at the women's prison, which had no flushing toilets, and where one pit latrine served 284 inmates.

The DAP, which is part of the HNP, estimated that there were approximately 10,400 prisoners in the country's jails as of August. The DAP also held prisoners in makeshift and unofficial detention centers, such as police stations in Petit-Goave, Miragoane, Gonaives, some parts of Port-au-Prince, and other locations. Local authorities held suspects in makeshift facilities, sometimes for extended periods, without registering them with the DAP.

Corrections authorities in Port-au-Prince maintained separate penitentiaries for adult men, women, and minors. Government reports suggested that, as of July, approximately 4 percent of prison detainees were female and 2 percent were children. In Port-au-Prince all male prisoners under 18 years of age were to be held at the juvenile facility at Delmas 33, but due to the lack of sufficient documentation, authorities could not always verify the ages of detainees. At times authorities detained minors believed to be older and whose ages could not be confirmed with adult inmates. Authorities moved the vast majority of these minors to juvenile detention centers within two months of verifying their ages. Outside Port-au-Prince minors and adults often occupied the same cells due to lack of available space. Authorities did not hold girls separately from women at the Petionville women's prison but separated convicts from pretrial detainees when possible. Due to lack of space, resources, and oversight outside the capital, authorities often did not segregate juveniles from adult prisoners or convicted prisoners from pretrial detainees, as the law requires.

Corrections officers were severely underresourced and lacked basic riot control and self-defense capacity. Prisoners' access to adequate nutrition remained a problem. The HNP has contractual and fiscal responsibility for the delivery of food to prisons. Some prisons had kitchen facilities and employed persons to prepare and distribute food. Prison authorities generally provided prisoners with one or two meals a day, consisting of broth with flour dumplings and potatoes, rice and beans, or porridge. None of the regular meals served to prisoners provided sufficient calories, according to medical standards. As a result authorities allowed prisoners regular deliveries of food from relatives and friends. Human rights groups reported that families sometimes paid prison staff to deliver supplemental meals and clothing to prisoners.

The HNP also managed other service contracts at prisons, such as sewage treatment. Most prisons had insufficient sewage facilities for their populations. Since only one HNP central office handled all contracts for law enforcement and prisons, attention to sewage problems often was lacking.

In August there was a large prison break at the Croix-des-Bouquets prison, the first major event of its kind since the post-2010 earthquake escape at the National Penitentiary. More than 300 prisoners of the facility's 900 total, including accused kidnapper Clifford Brandt, escaped in what authorities claimed to be an orchestrated event, potentially facilitated by DAP officers at the prison. Authorities noted, however, that insufficient staffing at the prison also appeared to have been a factor. As of September HNP authorities had recaptured approximately 70 of the escapees, including Brandt, and 30 officers had been detained pending an administrative investigation.

Administration: The government did not keep adequate prison records. In 2009 the UN Development Programme (UNDP) and the government created a database that began to track prison inmates. Its effectiveness was limited because the UNDP system was not completely compatible with the internal HNP recordkeeping system. All prisons utilized only handwritten paper files to document and manage inmates. The DAP, however, began using donor-provided portable biometric devices to register certain incoming inmates with the centrally managed database at the Judicial Police. There was no alternative sentencing for nonviolent offenders.

Prison authorities generally allowed prisoners and detainees access to visitors, but in May, after the highly publicized arrest of Rony Thimothee, spokesman for the opposition coalition Patriotic Force for the Respect of the Constitution (FOPARK) (see section 1.d.), opposition senator Moise Jean-Charles, and several FOPARK members were denied access to visit Thimothee in prison. In response to the incident, the HNP conducted an investigation, and on June 26, the offending prison guard was suspended without pay for 40 days.

The law permits religious observance in prison, and inmates could request to see a Protestant minister, a Catholic priest, or a Vodou houngan (religious leader). In practice most inmates gained access to religious services only once or twice a year. Prisons provided few, if any, organized, regular religious services, but members of religious organizations occasionally visited prisoners. Prison authorities were supportive of NGOs providing services to prisoners, particularly at the National Penitentiary in Port-au-Prince. NGOs provided limited medical services.

There was no prison ombudsman to handle complaints; however, the country's independent human rights monitoring body, the Office of the Citizen Protector (OPC), maintained a presence at several prison facilities and advocated for the rights and better conditions of prisoners, especially juveniles in preventive detention.

Independent Monitoring: The OPC regularly visited prisons and detention facilities in the country's 18 jurisdictions and worked closely with NGOs and civil society groups. The DAP permitted the ICRC, MINUSTAH, local human rights NGOs, and other organizations to freely monitor prison conditions. These institutions and organizations investigated allegations of abuse and mistreatment of prisoners, resulting several times in the improvement of their situations.

Improvements: The minister delegate for Human Rights and the Fight against Extreme Poverty, Marie Carmelle Rose Anne Auguste, continued to conduct several needs assessments in various prisons throughout the country. Her office, working in coordination with the DAP, provided clothing, toilet tissue, cups, bowls, forks, pillows, and hygiene kits to prisoners, as well as beds and reinforced tables and chairs for reading and writing workshops to inmates at the National Penitentiary.

Construction of new 200-, 150-, and 300-bed prison facilities in Cabaret, Petit-Goave, and Fort Liberte respectively, continued during the year. The government, in collaboration with international donors, completed renovations at the existing prison in Cap Haitien and the juvenile detention center at Delmas 33 in Port-au-Prince.

#### **d. Arbitrary Arrest or Detention**

The law prohibits arbitrary arrest and detention, and the constitution stipulates that authorities may arrest a person only if apprehended during the commission of a crime or based on a warrant issued by a competent official such as a justice of the peace or magistrate. Authorities must bring the detainee before a judge within 48 hours of arrest. By routinely holding prisoners in pretrial detention, authorities often failed to comply with these provisions.

The OPC's national and 12 regional offices worked on behalf of citizens to verify that law enforcement and judicial authorities respected the right to due process. When authorities detained persons beyond the maximum allotted 48 hours, the

responsibility of the OPC was to intervene on their behalf to speed the process. The OPC did not have the resources to intervene in all cases of arbitrary detention.

The law requires that authorities refer to the HNP's OIG all cases involving allegations of HNP criminal misconduct. Despite installing a full cadre of six inspectors during the year, the past shortage of investigators and expertise impeded cases from being investigated or closed in a timely manner. Senior HNP officials acknowledged receipt of several complaints alleging abuses committed by HNP officers during the year but noted that financial, staffing, and training limitations prevented the institution from readily addressing all reports of such misconduct.

Following violent protests in Port-au-Prince on May 14 to mark the third anniversary of President Michel Martelly's accession to the presidency, on May 17, Prosecutor Darius Kherson Charles issued, and the HNP executed, an arrest warrant for Rony Thimothee, spokesperson for the opposition FOPARK coalition, for inciting violence in the protests. After Thimothee's arrest police transported him to the office of the Port-au-Prince prosecutor, where he refused to be questioned without his lawyer present. Police then moved him to the Petionville police commissariat to await a hearing. On May 19, the Port-au-Prince prosecutor ordered Thimothee transported to the prison in Archaie, without having had a hearing. On June 4, the investigative judge released Thimothee and dismissed all charges. Thimothee, backed by several human rights groups, described his arrest as arbitrary and politically motivated. He insisted that HNP officers detained him without any legal justification and that his speedy imprisonment without judicial review was an effort to silence him.

In September, Judge Lamarre Belizaire issued an order placing former president Jean Bertrand Aristide under house arrest pending investigation. Some human rights advocates described this action as unjust and without legal basis, similar to Belizaire's 2013 rulings, in which he ordered the arrest of Enold Florestal, the plaintiff in a corruption case against the wife and son of President Martelly, and issued an arrest warrant for one of Florestal's lawyers, Andre Michel, for allegedly planning the 2010 shooting death of Florestal's brother-in-law. In August Belizaire, after clearing two other suspects in this case, charged the Florestal brothers and Michel for murder and referred the matter for prosecution.

### **Role of the Police and Security Apparatus**

The HNP is an autonomous civilian institution under the authority of a single director general and includes police, corrections, fire, emergency response, airport

security, port security, and coast guard functions. The HNP's capabilities and professionalism continued to improve during the year, resulting in an 80 percent reduction in kidnapping from January to September compared with the same period in 2013.

The HNP took steps during the year toward imposing systematic discipline on officers found to have committed abuses or fraud, but civil society continued to allege that impunity was a problem. The OIG, which is responsible for conducting internal investigations into allegations of police misconduct and recommending administrative action or referring criminal cases to the prosecutor, was more active than in previous years. In May the OIG recommended dismissal of 645 officers, approved by the HNP director general and the Ministry of Justice and Public Security. The vast majority of cases were for dereliction of duty, including many officers who remained on the HNP payroll but may not have worked for years. The office also adjudicated cases of homicide, drug trafficking, and embezzlement. A lack of well-trained internal investigators in the HNP resulted in slow case investigations and impeded final resolutions.

The Ministry of Justice and Public Security, through its minister and the secretary of state for public security, provides oversight to the HNP.

Women constituted approximately 10 percent of police; incoming classes of new HNP recruits exhibited a similar gender distribution. The HNP sexual and gender-based violence (SGBV) unit remained underresourced and understaffed. The unit had two satellite offices at Fort National and Delmas 33. The HNP assigned officers who benefited from SGBV training to serve as regional SGBV representatives in all 10 departments. These officers had minimal links to the SGBV unit in Port-au-Prince.

Since 2004 MINUSTAH, made up of 8,188 international military and police officers and civilians as of August, has operated with a mandate to assist and advise the government on security-related matters. MINUSTAH retained responsibility for patrolling IDP camps, but without arrest authority and with limited HNP support, it had difficulty controlling the crime and violence that occasionally erupted.

Foreign governments and other entities continued to provide a wide variety of training and other types of assistance to increase HNP professionalism, to include increasing respect for human rights. The HNP improved its outreach to and relations with local populations in Port-au-Prince by developing a new community-

policing unit, staffed as of August with approximately 80 officers. The unit aimed to implement policing strategies oriented toward crime reduction and fostering positive police-populace communication over aggressive interdiction.

### **Arrest Procedures and Treatment of Detainees**

The law permits police officers to make arrests with a court-authorized warrant or when they apprehend a suspect during the commission of a crime.

Authorities generally allowed detainees access to family members after arrest. While authorities generally acknowledged the right to counsel, most detainees could not afford a private attorney. Some departmental bar associations and legal assistance groups provided free counsel to indigents. Some NGO attorneys also provided free services to the indigent and, for the first time, the initial Ministry of Justice and Public Security budget draft for the year included an allocation for government-provided legal assistance through bar associations. The criminal procedure code does not allow for a functional bail system.

Arbitrary Arrest: Independent reporting confirmed instances in which, contrary to law, police apprehended persons not actively committing crimes without warrants or with improperly prepared warrants. Authorities frequently detained individuals on unspecified charges. Persons arrested reported credible instances of extortion, false charges, illegal detention, physical violence by HNP personnel, and judiciary officials' refusal to comply with basic due process requirements. The judicial system rarely observed the constitutional mandate to bring detainees before a judge within 48 hours. In some cases detainees spent years in detention without appearing before a judge.

Pretrial Detention: Prolonged pretrial detention remained a serious problem. Prison population statistics did not include the large number of persons held in police stations around the country for longer than the 48-hour maximum initial detention period. Of the approximately 10,400 prison inmates, authorities held an estimated 7,650 (or 74 percent) in pretrial detention. Approximately 73 percent of adult male prisoners and 80 percent of adult female prisoners were in pretrial detention, while 80 percent of male minors and 92 percent of female minors were pretrial detainees. Pretrial detention was significantly more prevalent in Port-au-Prince, where the pretrial detainee population represented approximately 51 percent of the national pretrial detainee prison population. As of July authorities had yet to try an estimated 90 percent of Port-au-Prince's inmates.

In some jurisdictions outside Port-au-Prince, the size of the pretrial detention population was much closer to internationally defined norms. Many pretrial detainees had never consulted with an attorney, appeared before a judge, or been given a docket timeline. While statements from prison wardens suggested that on average the majority of inmates spent between two and five years in pretrial detention, reports indicated that time spent in pretrial detention was much lower and varied by geographic jurisdiction. The average length of pretrial detention for inmates in the prisons in Saint-Marc, Fort Liberte, and Cap Haitien were 4.0, 4.2, and 8.6 months, respectively. Prisoners in the National Penitentiary and women's prison spent an average of 15 and 21 months, respectively.

Amnesty: In June the government pardoned five juvenile prisoners from the Delmas 33 facility in conjunction with the International Week of the Child.

#### **e. Denial of Fair Public Trial**

Although the law provides for an independent judiciary, senior officials in the executive and legislative branches exerted significant influence on the judicial branch and law enforcement. Allegations of high-level executive intimidation of judicial officials and corruption were frequent. MINUSTAH and international and local NGOs repeatedly criticized the government for attempting to influence judicial officials. Judges assigned to politically sensitive cases complained about interference from the executive branch.

Parliamentary officials rarely cooperated with the judiciary to investigate accusations of corruption and crime involving sitting parliamentarians. In one high-profile case, Daniel Theodore, a student at the Public University Southeast Jacmel and delegate of the “protest movement for the Advancement of Coral Sout” (MORACS), lost a tooth after being violently beaten by Senator Wencesclas Lambert on two separate occasions. The first incident occurred on March 9 during a meeting between the senator and members of MORACS and then again on March 10 when Theodore was about to give an interview to Signal FM radio. Upon filing a complaint against the senator, Theodore was informed by the court that the senator enjoyed immunity. Judge Monique Jean eventually declared that there was no proof of an assault.

Internal political divisions and organizational, funding, and logistical problems often hampered the efficient functioning of the Supreme Council of the Judiciary (CSPJ), charged with independently overseeing judicial appointments, the

discipline of judges, ethics issues, and management of the judiciary's financial resources.

Pervasive and longstanding problems, primarily stemming from a lack of judicial oversight and professionalism, contributed to a large backlog of criminal cases. Judiciary personnel were paid haphazardly, with arrears often running into months, and reported to inadequate work facilities that often lacked basic supplies. In July judges instituted a four-day nationwide strike calling for the payment of 20 months of salaries not paid under the previous government (2007-09). The lack of timely renewal of judicial mandates further slowed the functioning of the judiciary during the year.

The code of criminal procedure does not clearly assign criminal investigation responsibility, which it divides among police, justices of the peace, prosecutors, and investigating magistrates. As a result authorities often failed to question witnesses, complete investigations, compile complete case files, or conduct autopsies. While the law provides magistrates two months to request additional information from investigators, authorities were not supposed to invoke this delay more than twice for a given case. Magistrates often did not follow this requirement, and investigative judges often dropped cases or did not return them within the two-month limit. This resulted in extended pretrial detention for numerous detainees.

Corruption and a lack of judicial oversight also severely hampered the judiciary. Human rights organizations reported that several judicial officials, including judges and court clerks, arbitrarily charged fees to initiate criminal prosecutions, and that judges and prosecutors failed to respond to those who could not afford to pay. There were widespread, credible allegations of unqualified and unprofessional judges who received appointments as political favors. There were also persistent accusations that court deans--who are responsible for assigning cases to judges for investigation and review--at times assigned politically sensitive cases to judges with close ties to figures in the executive and legislative branches. In response human rights organizations often formally requested that the CSPJ investigate the behavior and review the judicial decisions of judiciary officials. The CSPJ was not always effective in providing judicial accountability and transparency. Many judicial officials also held full-time occupations outside the courts, although the constitution bars judges from holding any other type of employment except teaching.

## **Trial Procedures**

The judicial apparatus follows a civil law system based on the Napoleonic Code and has remained largely unchanged since 1880. Authorities widely ignored certain constitutionally assured trial and due process rights. The constitution also expressly denies police and judicial authorities the right to interrogate suspects unless legal counsel or a representative of the suspect's choice is present or the suspect waives this right.

The constitution provides defendants a presumption of innocence, as well as the right to attend trial, confront hostile witnesses, and call witnesses and evidence on their own behalf. Judges often denied these rights. The perception of widespread impunity also discouraged some witnesses from testifying at trials. Defendants and their attorneys had access to government-held evidence before trial, and defendants had the right of appeal.

The functioning of civil courts (tribunaux de paix), the lowest courts in the judicial system, was poor. Judges presided in chamber based on their personal availability and often maintained separate, full-time jobs. Law enforcement personnel rarely maintained order during court proceedings, and frequently there was no court reporter. Bribes were often the principal factor in a judge's decision to hear a case.

In multiple locales, especially in rural areas, elected communal administrators (CASECs) took the place of state judges and asserted powers of arrest, detention, and issuance of legal judgments. Some CASECs turned their offices into courtrooms.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

### **Civil Judicial Procedures and Remedies**

Victims of alleged human rights abuses were legally able to bring their cases before a judge for cessation of the violation. Courts could award damages for human rights abuse claims brought in civil forums. Seeking these types of remedies was difficult and rarely successful.

After more than two years of lower court and appellate procedures, a three-member panel ruled on February 20 that former president Jean-Claude Duvalier could be tried on charges of crimes against humanity and other human rights abuses. The

panel remanded the matter for new human rights and corruption proceedings, allowed the possibility for a significantly expanded plaintiffs' class, and called for additional findings of fact on both corruption and human rights charges. The court explicitly ruled that "customary human rights law is Haiti law," setting a precedent and decisively rejecting the Duvalier defense team's primary contention that the country's human rights framework did not allow him to face crimes against humanity and other human rights charges in Haiti. Following the death of Duvalier on October 4, lawyers representing the victims in the case against Duvalier and his collaborators stated that the case would continue against the Duvalier regime and other named defendants. The judge in the matter continued to interview witnesses and gather evidence.

Cases involving violations of an individual's human rights may be submitted through petitions by individuals or organizations to the Inter-American Commission of Human Rights, which in turn may submit the case to the Inter-American Court of Human Rights. The court can order civil remedies including fair compensation to the individual injured.

### **Property Restitution**

There were several highly publicized reports that the government failed to provide proportionate and timely restitution or compensation for governmental confiscation of private property.

The government's plans to reconstruct Port-au-Prince's downtown area raised anger and dissatisfaction over the enforcement of eminent domain laws in the area. Many residents and business owners claimed they did not receive proper notice from government officials to vacate their property prior to demolition. The government asserted its right to exercise eminent domain and claimed all property owners would be compensated at some future date.

The government continued to implement an ambitious initiative to develop Ile-a-Vache, a sparsely populated island off the southern coast, for international tourism. The project prompted outcries from islanders who claimed the government excluded them from the decision-making process that opened the island for investment in an international airport, hotels, villas, a golf course, and an underwater museum--and placed their futures in jeopardy. Advocates claimed that as many as 100 to 200 families would be affected by the planned development and expected to be relocated. While the civil code deemed island territories "public

state property” and therefore not subject to private land ownership, most of Ile-a-Vache’s residents asserted some form of tenancy to their land.

The Organization of Ile-a-Vache Farmers organized several demonstrations to protect land that had been in their families for generations. They demonstrated against the development plans with tire-burning protests, prompting a police response. A few residents reported police beat them. The government reacted to the protests by increasing police forces on the island and jailing the organization’s vice president, Jean Matulnes Lamy, at the National Penitentiary. While officials stated Lamy was detained on charges unrelated to the protests, activists believed his imprisonment was meant to have a chilling effect on the opposition.

The 2013 presidential decree declaring that the island was a public utility called for residents to be relocated, not removed from the island, and compensated for their losses. Nearly 20 families had been displaced so far without redress.

#### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The law prohibits such actions, and the government generally respected these prohibitions; however, there were several reports of government agents, including off-duty police officers, assisting in unauthorized forced evictions and relocations of IDPs.

### **Section 2. Respect for Civil Liberties, Including:**

#### **a. Freedom of Speech and Press**

The law provides for freedom of speech and press, and the government generally respected these rights. The independent media were active and expressed a wide variety of views without restriction.

Press Freedoms: The independent media were active and expressed a wide variety of views without formal restriction. There were isolated incidents, however, of actions against journalists by national and local government officials. As a result some independent media believed they were unable to criticize the government freely.

In April the National Telecommunications Council (CONATEL) threatened to apply retaliatory measures against any media that published information considered false or defamatory. CONATEL threatened to sanction Radio Zenith

for spreading what it considered unsubstantiated, derogatory information about government and police authorities, citing a 1977 executive order issued by the former dictator Jean- Claude Duvalier as legal authority.

Violence and Harassment: Some journalists were subjected to threats, harassment, and physical assault, allegedly due to their reporting throughout the year. In some instances government authorities participated in these acts. There were some developments in prominent cases from previous years.

In August a correspondent of Radio Kiskeya in Petit-Goave, Roney Innocente Desgranges, and the chief executive officer of Radio Television Plus, Gibson Bazile, received an envelope at their homes containing a 12-gauge cartridge accompanied by a threatening letter referencing political reporting they had done that was critical of certain government officials.

Two presidential security officers, under HNP command, assigned as security guards for President Michel Martelly, assaulted a reporter of Radio Kiskeya while the journalist was attempting to question President Martelly during a visit to a school in October 2013. The investigating judge, Jean Wilner Morin, issued an arrest warrant after the officers failed to appear before the judge for questioning. Authorities had not executed the arrest warrant as of October.

There were significant developments in the 2000 killing of journalist Jean Dominique as additional key suspects were indicted in January. In June authorities arrested and detained Markington Philippe in Argentina and extradited him to Haiti, where he awaited trial as of October.

Censorship or Content Restrictions: There were no reported cases of government-sponsored censorship. Human rights advocates claimed that certain government officials used public security ordinances to limit radio commentary criticizing the executive branch.

### **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authorization. According to the International Telecommunication Union, approximately 11 percent of citizens used the internet in 2013.

## **Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom or cultural events.

### **b. Freedom of Peaceful Assembly and Association**

The constitution provides for the freedoms of assembly and association, and the government generally respected these rights.

#### **Freedom of Assembly**

There were several instances when police used force to impose order during demonstrations. Citizens must apply for a permit to hold legal demonstrations. Impromptu political demonstrations in some instances provoked aggressive law enforcement responses. The HNP generally responded to these protests in a professional and effective manner.

### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/religiousfreedomreport/](http://www.state.gov/religiousfreedomreport/).

### **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. The government cooperated with international and humanitarian organizations, as well as other countries, in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern. Local and international human rights organizations, however, highlighted government consent of or active participation in the forced eviction of several IDPs from remaining tent camps.

Foreign Travel: The Institute for Social Well-Being and Research (IBESR), under the Ministry of Social Affairs and Labor, maintained its policy of requiring minors departing the country without their parents to have parental documentation authorizing the travel. According to IBESR officials, this policy helped deter instances of child trafficking and smuggling.

In August Judge Lamarre Belizaire issued two orders instructing the director general of the Immigration and Emigration Office to prohibit more than 30 members of the Aristide Foundation for Democracy and former officials of the Aristide administration, including former president Aristide, from leaving the country. The travel ban was seen as part of the continuing investigation into longstanding accusations of misuse of public funds and money laundering from illicit drug trafficking against members of the Aristide administration.

Emigration and Repatriation: A lack of resources hampered the ability of the National Migration Authority (ONM) to meet the basic needs of returning economic migrants and criminal returnees. In April the ONM was unable to support the rent for the Port-au-Prince deportee reception center, and the ONM maintained a sporadic supply of food, hygiene kits, and transportation as part of their repatriation operations for economic migrants returning to Cap Haitien and Port-au-Prince.

### **Internally Displaced Persons (IDPs)**

The government engaged in efforts to promote the safe, voluntary return, or resettlement of post-2010 earthquake IDPs but required substantial operational and financial support from international partners. These actions contributed to the significant decline of the IDP population during the year. The presence of IDP camps in the country persisted, with a large concentration of the estimated 123 remaining camps located in the greater Port-au-Prince metropolitan area. September estimates placed the number of IDPs remaining in camps at approximately 85,000 persons, with approximately 61,500 IDPs departing camps or being resettled during as of September. Statistics from the International Organization for Migration (IOM) Displacement Tracking Matrix suggested that by June the overall post-2010 earthquake IDP population had decreased 93.7 percent from the estimated peak of internal displacement in 2010.

The government, with the aid of international partners, continued the 16/6 Project. By the end of 2012, 11,000 families residing in IDP camps benefitted from this project, which completely emptied many highly visible camps on public land in Port-au-Prince. Several NGOs and international partners implemented similar resettlement programs. Approximately 97 percent of all IDP households that departed camps during the year left because of the support they received from national or internationally supported resettlement programs.

While some of the larger IDP camps had support from NGOs, the UN, and domestic law enforcement, many others were unregulated, with severely strained resources and extremely limited access to clean water and sanitation.

Through the UN police force (UNPOL), MINUSTAH maintained its presence in IDP camps and provided 24-hour security in some camps with high levels of reported violence. Nonetheless, even in camps with a law enforcement presence, residents and international observers reported little in the way of effective protection from violence, including SGBV, urban crime, and forced evictions. MINUSTAH and UNPOL members did not have arrest authority and typically functioned as a deterrent force rather than one actively engaged in law enforcement. International arrangements governing MINUSTAH's operations require an HNP officer to be present for any law enforcement operation, which effectively prevented MINUSTAH officers from engaging in crime prevention in the IDP camps without an HNP presence. Understaffing by the HNP sometimes prevented this partnership from functioning effectively. International workers in the camps noted that the HNP and MINUSTAH did not always enjoy positive relationships with IDPs. Camp residents and NGO workers reported that most police patrols, both UNPOL and HNP, monitored only the perimeter of camps and typically did not patrol after dark.

Some IDPs who received money, services, or a combination of both as incentives to move out of camps did so successfully, while others simply moved to different unregulated camps.

Data on forced evictions from the reports of international organizations working with IDPs suggested that through June, approximately 300 IDPs leaving camps were forcibly evicted, compared with 4,908 in all of 2013.

From December 2013 to February, authorities attempted to comply with a June 2013 court order to remove residents from an IDP settlement in the Canaan area of Port-au-Prince. AI reported that HNP officers and armed men with machetes forcibly evicted approximately 100 families between December 7 and 10, 2013. Police allegedly fired into the air and used tear gas against the residents, injuring at least three persons. AI reported police returned in February to continue the eviction, prompting residents to demonstrate against the eviction process. Residents reported police allegedly beat two persons and used tear gas to disperse the demonstrators. Residents claimed they never had an opportunity to challenge the court-ordered evictions.

## **Protection of Refugees**

Access to Asylum: The law provides for the granting of refugee status or asylum through Haitian missions or consulates abroad. Additionally, individuals could petition for asylum through the local office of the UN High Commissioner for Refugees. There were few reports, however, of requests for such status.

## **Stateless Persons**

The country's dysfunctional civil registry system yielded no reliable estimates on the number of stateless persons within the country. Haitians abroad reported complex bureaucratic procedures and high fees when obtaining government documentation such as birth certificates. These individuals were effectively stateless in their country of residence.

## **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The law provides citizens the ability to change their government through free and fair elections, which they exercised through elections based on universal suffrage.

## **Elections and Political Participation**

Recent Elections: The country held two rounds of presidential and legislative elections in 2010 and 2011. Michel Martelly won the presidential run-off, during which there were isolated incidents of fraud, flawed voter registration lists, ballot stuffing, intimidation, and some violence. International observers and civil society generally considered the second round to be free and fair.

Elections scheduled to take place in October--for the entire Chamber of Deputies, two-thirds of the Senate, and most municipal and regional offices--did not take place as planned. A continuing impasse between the executive, legislative, and judicial branches over the proper procedures to establish and promulgate an elections law impeded passage of one. The terms of all local and municipal officials expired in 2011, while the terms of one-third of the Senate expired in May 2012. While the 10 Senate seats remained unfilled--causing significant quorum problems in the upper house--many of the local and municipal officials whose terms expired in 2011 were replaced by executive branch appointees seen as friendly to the administration. The replacement of democratically elected officials with political appointees at the local level fueled criticism of President Martelly.

The entire Chamber of Deputies and another one-third of the Senate were due to expire on January 12, 2015.

On March 15, culminating several weeks of talks early in the year, President Martelly, representatives from the Senate, and approximately 50 political parties signed the El Rancho Accord, an agreement designed to provide new impetus to the electoral process. The agreement contemplated omnibus 2014 elections, with a first round target date of October 26, covering two-thirds of the Senate, the entire Chamber of Deputies, and all local and municipal posts. The proposed undertaking would involve more than 30,000 candidates vying for 4,000 seats.

Despite the initial optimism from domestic leaders and the international community that the El Rancho signing generated, significant obstacles persisted. After months of debate between the executive, legislative, and judicial branch actors over the reconstitution of the electoral council, on July 16, President Martelly ultimately promulgated a decree formally filling all nine positions on the Provisional Electoral Council (CEP) and setting elections for October 26. As of November, because of a persistent failure to gather the mandatory 16-member quorum, the Senate failed to vote on passage of amendments to the 2013 electoral law, and elections had not occurred as planned.

None of the major opposition political parties registered to compete in elections by the initial June 25 deadline. Meanwhile, another deadline, the July 27 voter registration cutoff, also passed amid a general atmosphere of uncertainty about elections. The opposition maintained the CEP was not impartial and not constitutionally formulated. In efforts to boost confidence in the CEP, all three branches of government made changes over the year to their respective appointees to the CEP--each branch appoints three members to the nine-seat council. In August the CEP announced that the initial October 26 target date for legislative elections would not be met but did not set an alternate date. Government officials claimed that voters who registered between the initial July closing of the voter rolls and the CEP's establishment of a final date would have their names transferred to the eligible voters' lists for future contests.

Political Parties and Political Participation: The Law on Formation, Functioning, and Financing of Political Parties, published on January 16 by President Martelly, is the first comprehensive legal instrument for regulating and strengthening political parties. This new law aims to address many structural challenges of the political system and lay the foundation to strengthen parties and improve governance. The law regulates both public and private funding for political

parties, which could establish more fairness in the political process. Traditionally, parties tied to the government had a competitive advantage during elections and received more logistical and financial resources. Additionally, the law encourages women's political participation and sets regulations to safeguard women political rights.

Participation of Women and Minorities: Five female members served in the Chamber of Deputies, which had 94 members as of October, and no women served in the Senate. In 2012 President Martelly promulgated a set of constitutional amendments, including one that recognized the principle of "at least 30 percent women's participation in national life and in public service." Despite an increase in women's participation from 2012 to 2013, the numbers leveled off during the year. As of September seven of 23 ministers and three of 10 secretaries of state were women, as well as three of the nine CEP counselors, including the council's director general. One of the nine members of the CSPJ and one of the nine members of the Cessation Court were women. While parliament has an Office of Gender Equity, led by Deputy Josie Marie Etienne, which is mandated to focus on comprehensively incorporating gender into pending legislation, as well as drafting new legislation aimed at addressing inequities, the delay in elections affected the office's work, since women did not have the opportunity to run for office.

Election laws since 2008 provided significant financial incentives for political parties to field women candidates, but parties consistently failed to meet the incentive criteria. The Senate draft version of the electoral law reinstated some of the gender provisions, but women's groups criticized the fact that no provisions in any version of the electoral law addressed the issue of providing for adequate women's representation in parliament.

#### **Section 4. Corruption and Lack of Transparency in Government**

In March the government adopted the Law on Prevention and Repression of Corruption, the country's first anticorruption law. The law criminalizes a wide variety of corruption-related offenses, including illicit enrichment, bribery, embezzlement, illegal procurement, insider trading, influence peddling, and nepotism. The law imposes sentences of three to 15 years' imprisonment and gives new legal authority to the government's Anticorruption Unit (ULCC) and its Financial Intelligence Unit, among others, to combat corruption.

There were numerous reports of government corruption during the year and a perception of impunity for abusers. Law enforcement authorities and the

government's anticorruption agencies launched several investigations that led to the dismissal and arrest of some government officials. Although the government continued to implement legal, administrative, and management reforms designed to increase accountability in several ministries and government institutions, corruption remained widespread in all branches and at all levels.

Corruption: The constitution mandates that the Senate prosecute high-level officials and parliament members accused of official corruption instead of handling such cases within the judicial system. Although the Senate brought no such prosecutions, both houses of parliament continued investigations into the alleged roles played by high-level executive officials, including President Martelly, Prime Minister Laurent Lamothe, and Minister of Justice Sanon, in pressuring Judge Serge Jean Joseph to drop his 2013 corruption case against members of the Martelly family. In September 2013 the Senate voted to adopt its special investigative commission's report recommending the impeachment of the three officials for their roles in pressuring Judge Joseph to drop his inquiry just prior to his sudden death and then "lying to the nation" about their meetings with Judge Joseph afterwards. The Chamber of Deputies, however, did not vote on their commission's report, which also recommended impeachment. In March the official autopsy results from a Canadian coroner's office determined that the judge died a "natural death," the probable cause being a brain hemorrhage.

There were frequent reports of corruption in the HNP. For instance, affluent prisoners at times obtained favorable conditions of detention. The HNP investigated some allegations of police malfeasance. New leadership at the HNP OIG helped to improve the unit's efficiency and push forward more internal investigations. As of September initial OIG investigations indicated the August prison break at the Croix-des-Bouquet facility was an orchestrated event involving multiple HNP officers.

The ULCC reported transferring 24 corruption-related cases to prosecutors through September, including against previous directors of the social insurance agency and the vehicle insurance agency. ULCC officials continued to cite the judiciary, specifically the lack of prosecutorial follow-through, as the reason for why investigations failed to yield successful legal dossiers.

Financial Disclosure: The law requires all senior officials of the government to file financial disclosure forms within 90 days of taking office and within 90 days of leaving office. Officials must report their assets and those of their immediate

family. There is no requirement for periodic reporting. When filed, these disclosure reports were confidential and not available to the public.

The sanction for failure to file financial disclosure reports was a withholding of 30 percent of the official's salary, but the government did not apply this sanction in previous years. In May, however, the Ministry of Finance froze salaries of 140 government officials, including 30 judges and prosecutors in Port-au-Prince, following the ULCC tracking that none of the officials had filed their required submissions. This was the first instance of the government applying prescribed consequences on working-level public officials failing to file.

Public Access to Information: No law requires the government to provide citizens access to government information.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials generally cooperated in addressing the views of various human rights groups, although they disagreed at times on the scope of certain human rights problems and the most appropriate means of addressing human rights issues.

There were some reports of governmental efforts to restrict or otherwise suppress criticism, specifically by journalists and radio personalities. Prominent human rights advocacy organizations were often able to elicit supportive responses from the CSPJ after publically calling for investigation into perceived violations of human rights and the rule of law by members of the judiciary.

Government Human Rights Bodies: In May 2013 the Martelly administration issued a decree creating an interministerial human rights committee (CIDH) to coordinate and harmonize the country's laws and public policies with constitutionally provided and internationally recognized human rights. The CIDH is statutorily composed of representatives from the Office of the Prime Minister, minister delegate, Justice Ministry, Labor Ministry, Ministry of Women's Affairs and Women's Rights, Ministry of Public Health, Ministry of Education and Professional Training, Ministry of the Interior and Territorial Collectivities, and Ministry of Foreign Affairs and Worship. The CIDH is also responsible for creating and implementing a national human rights policy strategy. The decree

creating the CIDH stipulates that the body must meet at least quarterly and is to receive its funding from the Ministry of Planning and External Cooperation.

Minister Delegate Auguste provided the prime minister with human rights policy guidance and implemented several national poverty alleviation programs. The minister delegate also led the government in several human rights-related initiatives, including the development of a national human rights institute, follow-up on the 122 recommendations received during the country's Universal Periodic Review, facilitating the creation and work of the CIDH, and preparing reports for international human rights bodies. Auguste also consulted with international organizations and multilateral partners to coordinate government responses to the forced eviction of IDPs. She led the country's diplomatic representation at several international conferences and symposiums on human rights issues.

During the year the CIDH initiated a series of consultations with NGO representatives in departments around the country. The CIDH was seeking feedback and suggestions from human rights advocates for a first draft of a national human rights plan.

The constitution provides a seven-year mandate to the OPC, the country's independent human rights ombudsperson, a post held by Florence Elie, whose term ends in 2016. The OPC continued its investigations into allegations of human rights abuse and worked collaboratively with international organizations. The OPC's regional representatives implemented its assistance programs throughout the country. OPC Director Elie stated that, despite its budget and international donor support, the institution did not possess the necessary funding or physical or human capacity to implement its strategic development and advocacy plan in each of the 10 departments. Human rights advocates and international partners noted that the OPC remained one of the country's most important national institutions responsible for independently monitoring potential human rights abuses, especially in detention centers.

The Chamber of Deputies and the Senate each had a human rights committee; however, neither body undertook any action due to delayed elections.

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

The law does not specifically prohibit discrimination on the grounds of race, gender, language, sexual orientation or gender identity, or social status, but the preamble to the constitution specifically reiterates the importance of adhering to

the Universal Declaration of Human Rights, which prohibits all forms of discrimination. Nonetheless, no effective governmental mechanism administered or enforced such provisions, including provisions called for in various regional and international agreements.

## Women

Rape and Domestic Violence: While the law prohibits rape, it does not recognize spousal rape as a crime. The penalty for rape is a minimum of 10 years of forced labor, increasing to a mandatory 15 years if the survivor was less than 16 years old or if the rapist was a person of authority. In the case of gang rape, the maximum penalty is lifelong forced labor. Actual sentences were often less rigorous, and prosecution frequently was not pursued due to lack of reporting and follow-up on survivors' claims. By September international observers reported 415 incidences of rape and rape-related crimes. The criminal code excuses a husband who kills his wife or her partner found engaging in an act of adultery in his home, but a wife who kills her husband under similar circumstances is subject to prosecution.

The law similarly does not classify domestic violence against adults as a distinct crime. Women's rights groups and human rights organizations reported that domestic violence against women remained commonplace and underreported. Police rarely arrested the perpetrators or investigated the incidents, and the survivor sometimes suffered further harassment and reprisals from perpetrators. Judges often released suspects arrested for domestic violence and rape.

Sexual and gender-based violence (SGBV) was a chronic problem. In an August MINUSTAH report, the peacekeeping force noted that the weakness of the justice system made it difficult for SGBV survivors to find redress, and the fear of reprisals and social stigma attached to being a survivor of SGBV contributed to underreporting and infrequent prosecutions.

Human rights groups and lawyers said barriers to reporting rape remained high and included stigmatization, fear of reprisal, and distrust of the judiciary and legal system. They also said there were wide disparities in access to and the quality of medical services from hospitals treating rape survivors. Multiple credible groups said that legal authorities often asked rape survivors inappropriate questions, such as whether the survivor was a virgin before the incident and what clothing the survivor was wearing at the time of the alleged rape. In some cases authorities advised survivors against pressing charges in order to avoid the public humiliation of a trial. Survivors of rape and other forms of sexual violence faced major

obstacles in seeking legal justice, as well as access to protective services such as women's shelters.

MINUSTAH's 2013 report on police and judicial response to rape showed that various actors in the criminal justice system inadequately handled the vast majority of rape cases. The report concluded the state failed in its obligation to conduct investigations and to ensure that rape victims had sufficient access to victims' services or the judicial system. The barriers to justice for rape survivors included the requirement that women obtain a medical certificate verifying the rape. Justices of the peace, who statutorily had no jurisdiction to handle this type of crime, also at times attempted to "amicably resolve" rape complaints by negotiating a financial settlement for the victim in exchange for dropping the complaint. The lack of clerical rigor in properly registering rape complaints also contributed to systemic underreporting.

The vast majority of rape survivors never filed a complaint. Those who chose to file a complaint could do so with police, the Prosecutor's Office, or a justice of the peace. Survivors could also request the doctor at the medical center call the HNP on their behalf. While the UN report found that 81 percent of women who chose to file a rape complaint did so with police, very few of those cases that formally entered the judicial system via police, Prosecutor's Office, or the justices of the peace were ever resolved. According to the report: (1) police handled only 47 percent of the cases reported to them; (2) the justices of the peace forwarded to the proper judicial authorities 61 percent of the cases they received from either police or victims; (3) prosecutors pursued 64 percent of all rape cases they received; (4) investigating magistrates' chambers pursued only 10 percent of the cases received from victims or prosecutors; and (5) first instance courts handled only 34 percent of the cases they received from the investigating magistrates' chambers. Overall, only a small percentage of complaints filed went to trial. The data suggested that fewer than 2 percent of rape complaints made it to the trial phase and an even smaller percentage resulted in a conviction.

Attorneys who represented rape survivors said that authorities were reasonably responsive to cases involving the rape of minors, as the law is clear and judicial measures exist to deal with such cases, which outrage from local communities often accompanied. Authorities, however, frequently dropped or did not pursue cases when the offender was also a minor or the survivor was an adult due to the lack of clear legal or administrative structures to deal with such cases. The attorneys claimed authorities often "provisionally released" juvenile offenders in rape cases back to their parents' recognizance as allowed for in the law.

Through international donor funding and support, the government took significant measures to combat SGBV. From October 2013 to September, authorities had referred 2,294 SGBV survivors to voluntary counseling and testing for HIV and other sexually transmitted infections, as well as reproductive health and psychological support services. Similarly, health-care providers at 30 different facilities were trained to identify and manage SGBV cases and provide referrals to social and legal services. Additionally, authorities sensitized and surveyed persons on SGBV, including medical staff and patients. These developments were part of a much larger, multi-year public awareness and survey project that specifically targeted SGBV and reached approximately 115,000 persons living in high-risk areas.

Students at the magistrate school--who serve as new judges, prosecutors, and court clerks upon graduation--received training on SGBV and strategies for improved investigation and prosecution of such crimes, victim assistance, and evidentiary procedures. Funding from the international community added a special advisor to the HNP's SGBV Unit to strengthen law enforcement's capacity to prevent and respond to SGBV crimes.

Government and international partners also conducted mentoring sessions on SGBV as part of pilot program for chief judges, prosecutors, and justice of the peace courts in order to increase the number of SGBV cases sent to the Prosecutors' Office for prosecution.

Female Genital Mutilation/ Cutting (FGM/C): There is no law that prohibits FGM/C, and the practice was virtually nonexistent in the country.

Sexual Harassment: The law does not specifically prohibit sexual harassment, although the labor code states that men and women have the same rights and obligations. Data concerning sexual harassment in the workplace were not available, although observers suggested that sexual harassment was common, particularly in factories. Such incidents were unreported because of high unemployment and because victims had little confidence in the ability of the judicial system to provide protection.

Anecdotal evidence also suggested that sexual harassment and other derogatory treatment was a particular problem for female law enforcement officers, who constituted 12 percent of the HNP. Female police officers reported facing challenges their male counterparts did not, including coworker gossip, more

# EXHIBIT

11



World | Mon Jan 18, 2016 10:52pm EST

Related: WORLD

# Protesters vow to derail Haiti presidential vote; election offices burned

PORT-AU-PRINCE | BY JOSEPH GUYLER DELVA



A man riding a bike passes next to a car that was set afire by protesters during a demonstration against the electoral process in Port-au-Prince, Haiti, January 18, 2016. 1 of 5  
REUTERS/ANDRES MARTINEZ CASARES

Stone-throwing protesters took to the streets of Haiti's capital on Monday to demand the suspension of a Jan. 24 presidential election over alleged irregularities, while in provincial areas unknown attackers burned several electoral offices.

Haiti is due to hold a run-off vote backed by international donors on Sunday, but tensions have risen since opposition candidate Jude Celestin said last week he would withdraw, on grounds that electoral authorities favored the ruling party.

Swiss-trained engineer Celestin, 53, came second in an October first round in the poor Caribbean nation, beaten by banana exporter Jovenel Moise, 47, the ruling party candidate.

Accompanied by a man playing trumpet, the several thousand-strong crowd grew angrier as it moved from poor neighborhoods into downtown Port-au-Prince. Some protesters burned vehicles, threw rocks and attacked a petrol-pump.

"If I have to take up weapons I will do that. I have done it in the past," said slum resident Jaques Madiou, 40, who said he had taken up arms after former president Jean-Bertrand

## DAVOS 2016



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- Somewhat disagree
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Aristide, a leftist ex-priest, was forced from power in 2004.

Elections and transfers of power in Haiti have long been plagued by instability, and international observers said October's vote was relatively smooth. However, several of the 54 candidates alleged fraud in favor of Moïse.

On Monday, Moïse called on voters to participate in the second round, telling reporters that the election was a "turning point" that would strengthen Haiti's democracy.

The protesters demanded the creation of an interim government and fresh elections to be held after President Michel Martelly leaves office in February. The opposition groups included the Platform Pitit Desalin and supporters of Celestin.

"We declare this week the rebellion week to block the Jan. 24 election. We will protest in front of each voting booth and voting center," said Assad Volcy, deputy secretary general for Pitit Desalin.

"When Martelly leaves on Feb. 7 we want a provisional government to evaluate the electoral process and complete it," he said.

In the north of the country, unknown assailants burned four offices on Sunday night belonging to the electoral council, blamed by many critics for irregularities in the October vote. Four members of the electoral council resigned recently.

The Organization of American States said it deplored the violence against the election council. The council vowed to go ahead with the vote on Sunday.

(Editing by [Frank Jack Daniel](#) and [Lisa Shumaker](#))

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# EXHIBIT

12

Dear Mr. Chairman:

Consistent with Section 212(a)(3)(C)(iv) of the Immigration and Nationality Act, as amended ("the Act"), the Secretary of State has asked that I share with you his attached letter to the Attorney General finding, pursuant to Section 241(a)(4)(C) of the Act, that the presence and activities in the United States of Emmanuel Mario Constant, a Haitian national, would have potentially serious adverse foreign policy consequences for the United States and would compromise a compelling United States foreign policy interest.

Sincerely,

Wendy R. Sherman  
Assistant Secretary  
Legislative Affairs

Enclosure:

As stated.

The Honorable  
Benjamin Gilman,  
Committee on International Relations,  
House of Representatives.

|   |                                     |  |                               |
|---|-------------------------------------|--|-------------------------------|
| DEPARTMENT OF STATE                                 |                                     | IS/FPC/CDR <i>J</i>                      | Date: <i>6/20/96</i>          |
| <input checked="" type="checkbox"/> RELEASE         | <input type="checkbox"/> DECLASSIFY | MR Cases Only                            |                               |
| <input type="checkbox"/> EXTEND                     | <input type="checkbox"/> DECLASSIFY | EO Citations                             |                               |
| <input type="checkbox"/> DENY                       | IN PART                             |  |                               |
| <input type="checkbox"/> Update Non-Responsive Info |                                     |  | TS authority to:              |
| FOIA Exemptions                                     |                                     | <input type="checkbox"/> CLASSIFY as     | <input type="checkbox"/> S or |
| PA Exemptions                                       |                                     | <input type="checkbox"/> DOWNGRADE TS to | <input type="checkbox"/> S or |

Orig to Justice, 3/29.

S/S 9505450

THE SECRETARY OF STATE

Orig to OIS.

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March 29, 1995

Dear Madam Attorney General:

I am writing to inform you that, pursuant to Section 241(a)(4)(C) of the Immigration and Nationality Act, 8 U.S.C. §1251(a)(4)(C), I have concluded that the continued presence and activities of Emmanuel Mario Constant (born October 27, 1956, in Haiti) in the United States would have potentially serious adverse foreign policy consequences for the United States and would compromise a compelling United States foreign policy interest. Mr. Constant entered the United States sometime in December 1994, and insofar as the Department of State is aware, is still here. I request that you seek to confirm whether or not he is in the United States and, if so, to detain and deport him. I also request that you take all steps possible to effect his deportation to Haiti.

My decision to invoke INA §241(a)(4)(C) with respect to Mr. Constant is based on the following considerations. Supporting Haiti's fragile democracy is one of our foremost foreign policy priorities, as is seeking respect for human rights in Haiti and throughout the world. A central element of our bilateral policy toward Haiti is helping to build democratic institutions, including a vastly improved criminal justice system through the efforts of the Administration of Justice program jointly administered by the Department of State, the Department of Justice, and the Agency for International Development. The Administration of Justice project seeks to enable the Haitian courts to bring to justice those responsible for serious crimes and violations of the fundamental human rights of Haitians. One target of this effort is the Revolutionary Front for the Advancement and Progress of Haiti ("FRAPH"). Although FRAPH claims to be a political party, it has never in fact participated in the national political process. It is officially regarded by the Department of State as an illegitimate paramilitary organization whose members were responsible for numerous human rights violations in Haiti in 1993 and 1994. Opposition to FRAPH is a key element of our Haitian foreign policy, and we have said so publicly.

The Honorable  
Janet Reno,  
Attorney General.

|   |                                       |  |                               |
|---|---------------------------------------|--|-------------------------------|
| DEPARTMENT OF STATE                                     |                                       | IS/FPC/CUR                               | Date: 6/20/90                 |
| <input checked="" type="checkbox"/> CONFIDENTIAL        | <input type="checkbox"/> DECLASSIFY   | FOR OFFICIAL USE ONLY                    |                               |
| <input type="checkbox"/> SECRET                         | <input type="checkbox"/> CONFIDENTIAL | NO FORN DISSEM                           |                               |
| <input type="checkbox"/> UNCLASSIFIED Non-Response Info |                                       | TS authority to:                         |                               |
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| GA Exemptions   |                                       | <input type="checkbox"/> DOWNGRADE TS to | <input type="checkbox"/> S or |

Mr. Constant's presence and activities in the United States seriously undermine these compelling foreign policy objectives. Mr. Constant is one of the co-founders and current President of FRAPH. He was instrumental in sustaining the repression that prevailed in Haiti under the illegal military-led regime until it was displaced last September by the multinational force led by the United States. On February 3, 1995, Mr. Constant sent a letter on behalf of FRAPH to the Special Representative of the Secretary General of the United Nations for Haiti using a Washington, D.C., return address and telephone number. In addition, since his arrival in the United States, FRAPH elements in Haiti have broadcast on Haitian radio tape recordings of Mr. Constant speaking on behalf of FRAPH to the Haitian people.

These activities create the impression in Haiti that the United States is permitting Mr. Constant to use the United States as a base of operations for FRAPH. They fuel false but widespread perceptions in Haiti that Mr. Constant was deliberately allowed to enter the United States in December and that the United States Government is secretly supporting him; that the United States endorses both him and his positions; and that we approve of FRAPH. These misperceptions persist notwithstanding that we have consistently denounced FRAPH and made statements distancing the United States from it and Mr. Constant.

My concern about Mr. Constant's presence and activities in the United States is heightened by the fact that elections for a new Haitian Parliament and for over 2,000 local government positions are scheduled for June 4, 1995. The United States has a huge stake in making sure that these elections -- the best manifestation of democracy -- are held successfully. Because Mr. Constant for many Haitians symbolizes the antithesis of democracy, permitting him to remain at large in the United States could undermine this important foreign policy objective.

In light of these facts and the current perception in Haiti of the United States' tolerance of Mr. Constant, even if Mr. Constant were to cease his FRAPH-related activities in the United States, his mere presence here would seriously undermine U.S. foreign policy interests. To permit Mr. Constant to remain at large in the United States in these circumstances will appear as an affront to the Haitian Government, and will cast doubt upon the seriousness of our resolve to combat human rights violations, thereby undermining our ability to play a leadership role in this area. I have therefore concluded that nothing short of Mr. Constant's removal from the United States can protect our foreign policy interests in Haiti.

The Haitian Government shares our belief that Mr. Constant is in the United States and has requested his extradition so that he may face criminal charges in Haiti. We have returned the request, which was technically deficient, to the Haitian Government, to which we have offered assistance in perfecting the documents. Given the compelling foreign policy interests at stake, it is essential that we seek Mr. Constant's deportation independent of any extradition efforts.

Accordingly, I have concluded that Mr. Constant's presence and activities in the United States have potentially serious adverse foreign policy consequences for the United States and would compromise a compelling United States foreign policy interest, as provided for in INA §241(a)(4)(C). I request that you take all reasonable efforts to ensure Mr. Constant's expeditious deportation from the United States. In light of the Haitian Government's interest in having Mr. Constant returned to Haiti, I also request that you do everything possible, consistent with the Immigration and Nationality Act, to effect his deportation to Haiti.

Sincerely,



Warren Christopher

# EXHIBIT

13

## DECLARATION OF SCOTT A. GILMORE, ESQ.

I, Scott A. Gilmore, Esq., declare as follows:

1. I am a staff attorney at the Center for Justice and Accountability (“CJA”). I have personal knowledge of the facts set forth below.
2. The Center for Justice and Accountability is an international human rights organization dedicated to deterring torture, war crimes, crimes against humanity and other severe human rights abuses around the world through litigation, policy advocacy and outreach in pursuit of truth, justice and redress for victims and survivors.
3. Since September 2012, I have investigated human rights abuses in Haiti, provided legal representation to Haitian survivors of human rights abuses, and submitted *amicus curiae* briefs or other materials to Haitian courts on matters of international criminal law and human rights law. I traveled to Port-au-Prince in July 2013 and again in January 2014 to interview survivors of human rights abuses and to consult with Haitian lawyers, parliamentarians, and human rights monitors. I regularly communicate with Haitian lawyers and human rights monitors to observe the security situation in Haiti and monitor judicial proceedings. I am fluent in French, the official language of the Haitian justice system.
4. I regularly consult with U.S. government officials, human rights organizations and journalists regarding human rights, rule of law developments, and legal procedure in Haiti.
5. I have reviewed the Declarations of Mario Joseph (May 2007), Brian E. Concannon, Jr., Esq., (May 18, 2007), and Robert E. Maguire (May 18, 2007), which were submitted to Judge Abraham Gerges in the case captioned *The People of the State of New York v. Emmanuel Constant*, Indictment No. 8206 2006.
6. On January 15, 2016, I consulted via email and Skype with Mario Joseph, Director of the *Bureau des Avocats Internationaux*, a public interest law firm in Port-au-Prince, Haiti; Brian E. Concannon, Jr., Director of the Institute for Justice & Democracy in Haiti

(“IJDH”) in Boston, MA; and Nicole Phillips, a staff attorney for IJDH located in Port-au-Prince, Haiti.

7. Based on my personal observations in Haiti, my engagement with the Haitian legal system, a review of human rights literature regularly relied upon in the field, and my consultation with Mario Joseph, Brian Concannon, Jr., and Nicole Phillips, it is my opinion that the views expressed in the 2007 declarations of Joseph, Concannon, and Maguire regarding the dysfunctional state of the Haitian judicial system remain accurate as of January 2016.

8. The Haitian justice system is plagued by corruption, political interference, witness intimidation, antiquated codes of procedure, and a lack of training, staff, and resources. As the United States Department of State observed in its *Country Report on Human Rights for 2014*, “[c]orruption and a lack of judicial oversight . . . severely hampered the judiciary” in Haiti. (p. 13). The *Report* also notes that “politically sensitive cases” are “at times assigned . . . to judges with close ties to figures in the executive and legislative branches.” (*Id.*) Because the Haitian justice system remains compromised, it would struggle to effectively prosecute any high-profile, complex cases involving human rights crimes.

9. The weakness of the Haitian justice system has created a situation of impunity for past human rights violations. In the U.N. Human Rights Council’s February 7, 2014 Report of the independent expert on the situation of human rights in Haiti, Gustavo Gallón observed that:

The Haitian people have suffered serious and systematic violations in the recent past that have gone unpunished, which is contrary to the international obligations of the State and undermines its ability to build solid foundations and public confidence in the ability of State institutions to protect the rights of citizens, and to establish a democratic political system.

U.N. Independent Expert on the Situation of Human Rights in Haiti, Report of the Independent Expert on the Situation of Human Rights in Haiti, U.N. Doc. A/HRC/25/71 (Feb. 7, 2014), ¶58.

10. The safe haven afforded to other members of FRAPH and the military junta is exemplary of this impunity. Constant’s associates and co-defendants in the 2000 Raboteau

massacre trial remain at large and are not being pursued by authorities in Haiti. Senior leaders of the 1991 coup and its violent aftermath remain at large: Colonels Dorelien and Valmond and Major General Duperval escaped from prison in February 2004, along with the other 12 defendants convicted in the Raboteau judgment. FRAPH co-founder Louis Jodel Chamblin is also out of prison.

11. As of January 2016, the Haitian government has made no efforts to pursue any of the Raboteau defendants, either those convicted *in absentia* or those convicted in court by a jury. The fact that these individuals have not been pursued by the justice system strongly suggests that Emmanuel Constant would not face criminal sanctions, should he be released from prison and return to Haiti, whether voluntarily or by deportation.

12. Moreover, assassinations and political violence carried out by paramilitary actors against perceived political opponents remains a feature of Haitian politics. For example, on July 28, 2015, the Inter-American Commission on Human Rights issued precautionary measures calling on the government of Haiti to protect human rights defenders in the Grande Anse Department against violent attacks perpetrated by municipal officials and KOREGA, an armed political faction whose tactics recall those of FRAPH. *See Inter-American Commission on Human Rights, Case of Juders Ysemé and others concerning Haiti*, Res. 26/2015, Precautionary Measure W275-15, Jul. 28, 2015, available at <http://www.oas.org/fr/cidh/decisions/pdf/2015/MC275-15-FR.pdf> (French only).

13. On January 22, 2016, the threat of a resurgence of political violence resulted in the postponement of presidential run-off elections scheduled for January 24, 2016.

14. Given this political climate in Haiti, Haitian lawyer Mario Joseph, who represented victims of FRAPH in the Raboteau trial of 2000, has informed me that he believes the release of Constant from prison and his potential return to Haiti would exacerbate the political

instability in Haiti and fuel the revival of paramilitary groups inspired by FRAPH. I agree with Mr. Joseph.

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

Executed on this 23rd day of January, 2016, in Washington, DC.

A handwritten signature in black ink, reading "Scott A. Gilmore", written over a horizontal line.

Scott A. Gilmore, Esq.

# EXHIBIT

14

681GDOEH HEARING  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JANE DOE I, JANE DOE II, AND  
JANE DOE III,  
Plaintiffs,  
v.  
EMMANUEL CONSTANT,  
Defendant.

04 CV 10108 (SHS)

New York, N.Y.  
August 29, 2006  
9:30 a.m.

HON. SIDNEY H. STEIN,

District Judge

SONNENSCHEN NATH & ROSENTHAL, LLP  
Attorneys for Plaintiffs  
BY: JESSICA WOELFEL  
MONICA PA  
IVOR E. SAMSON

THE COURT: All right. Good morning to all of you. Please be seated. This is an Inquest for damages following the entry of default judgment in the case of Does I, II, and III against Emmanuel Constant. The action was commenced on December 22, 2004 by the filing of a summons and complaint, and an affidavit of service was filed stating that the defendant Emmanuel Constant was personally served on January 14, 2005 in SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

HEARING

681GDOEH front of 26 Federal Plaza.  
Because I was concerned that the service be actually made and that Mr. Constant have notice of this litigation, I requested that an affidavit of service be filed indicating the steps taken by the process server to ensure that the individual he served was, in fact, Mr. Constant, and that affidavit was filed on January 24 of this year.  
Mr. Constant has not answered the complaint. Subsequent to the time for an answer expiring, a clerk certificate of default was issued on December 1, 2005 by the clerk of the Southern District stating that the time to answer had expired and no answer had been filed.  
Plaintiffs then filed a motion for judgment by default on December 7, 2005, which was returnable on December 21 of 2005, and that was on notice to the defendant as well, and the defendant did not respond to that motion.  
Subsequent to the return date of that motion, I granted the plaintiffs' motion for judgment by default against Mr. Constant on August 16 and stated that the amount to be determined that damages would be awarded in an amount to be determined according to the proof of the hearing on damages in this matter, and in that August 16 order I set the hearing for damages at today, August 29 at 9:30 a.m. in Courtroom 23A. I directed the plaintiffs to serve a copy of that order on

THE CENTER FOR JUSTICE & ACCOUNTABILITY  
Attorneys for Plaintiffs  
BY: MOIRA FEENEY  
MATTHEW EISENBRANDT

CENTER FOR CONSTITUTIONAL RIGHTS  
Attorneys for Plaintiffs  
BY: JENNIFER M. GREEN

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

681GDOEH HEARING  
(Case called)  
(In open court)  
THE DEPUTY CLERK: Will counsel please state their appearances for the record.  
MS. WOELFEL: Good morning, your Honor. Jessica Woelfel from Sonnenschein Nath & Rosenthal. Ivor Samson, Sonnenschein Nath & Rosenthal, appearing on behalf of plaintiffs Jane Doe I and II.  
MR. EISENBRANDT: Matthew Eisenbrandt, the Center for Justice & Accountability.  
MS. FEENEY: Good morning, your Honor. Moira Feeny from the Center for Justice & Accountability on behalf of all the plaintiffs.  
MS. GREEN: Jennifer Green, the Center for Constitutional Rights on behalf of all the plaintiffs.  
MS. PA: Good morning, your Honor. Monica Pa from Sonnenschein Nath & Rosenthal on behalf of Jane Does I and II.

defendant, and the plaintiffs, in a conference yesterday.  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

HEARING

681GDOEH stated that they had indeed served a copy of the order on Mr. Constant. My recollection was that it had been served by a male at his home address in Queens, and also there was another method of service, if I recall correctly. Does somebody want to remind me?  
MR. SAMSON: Yes, your Honor. It was also done by Federal Express to the Suffolk County Jail where he's presently incarcerated. And I have an original and copies of an affidavit of service if you'd like me to present that to the Court.  
THE COURT: Yes, if you would, please.  
Mr. Samson, can you translate the tracking information on this affidavit of service? I am going to have this affidavit of service by Diane Donner setting forth the service of the August 16th default judgment on Mr. Constant. As I said, explain the tracking information, if you can.  
MR. SAMSON: I think I can, your Honor, but I gave you my copy. I wonder if I could have the extra copy back, I'll give you both copies back. Actually, you've given me a bunch of copies here. I'll keep one copy and give all the rest back to you.  
The affidavit says that she served the defendant via Federal Express at his last known home address, 137-55 225th Street, Laurelton, New York. I don't know if that's correct. SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

1 in care of the Suffolk County Jail, 110 Center Drive,  
2 Riverhead, New York. So take me through the FedEx.  
3 MR. SAMSÓN: My understanding, your Honor, if you look  
4 at Exhibit A attached, it shows that on August 17th, the order  
5 was sent to Mr. Constant by Federal Express to 137-35 225th  
6 Street in Laurelton, New York, and then the entry immediately  
7 under that also on August 17th. And there's two check marks on  
8 the left-hand column that show that it was sent to Mr. Constant  
9 care of the Suffolk County Correctional Facility at 110 Center  
10 Drive, Riverhead, New York.  
11 And Exhibit B is basically a history of the previous  
12 Federal Express shipments sent to Mr. Constant at the Laurelton  
13 address that he signed for and accepted, received at that ---  
14 THE COURT: But that's not this ---  
15 MR. SAMSÓN: No. No.  
16 THE COURT: Was it in this case? Does Exhibit B ---  
17 MR. SAMSÓN: In this case, yes.  
18 THE COURT: What documents does this reflect he signed  
19 for, if you know?  
20 MR. SAMSÓN: I'm sorry, your Honor. I can't tell by  
21 looking at this what the documents were. It just simply shows  
22 that he received documents either at the Suffolk County Jail or  
23 at the Laurelton address.  
24 THE COURT: All right. And what does Exhibit A show  
25 about what happened to the packages after they were sent by  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

HEARING

1 68TGD0EH  
2 you? Does it show somebody signed for them?  
3 MR. SAMSÓN: It shows they were delivered to Mr. ---  
4 again, my understanding, your Honor. I'm not a Federal  
5 Express expert, but my understanding is it shows that it was  
6 delivered to that address --- to both addresses; the address in  
7 Laurelton and to the Suffolk County Jail, and our understanding

13 MR. SAMSÓN: If I may, depending on the nature of the  
14 government's response, may we have an opportunity to respond to  
15 it if it raises appropriate issues?  
16 THE COURT: Of course. How long would you like?  
17 MR. SAMSÓN: Thirty days thereafter.  
18 THE COURT: At least that's up to you. I'll give you  
19 whatever time you want.  
20 MR. SAMSÓN: If we could have 30 days. It may be less  
21 depending on the nature of the response.  
22 THE COURT: All right. Yes.  
23 MR. SAMSÓN: Thank you.  
24 THE COURT: You'll have 30 days after the response.  
25 Let's make it October 27, although my suspicion is there won't  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

HEARING

1 68TGD0EH  
2 be anything substantive in it, but then you can get your  
3 response in earlier.  
4 MR. SAMSÓN: Yes.  
5 THE COURT: All right. First witness.  
6 MR. SAMSÓN: Your Honor, just two preliminary matters  
7 before we call the first witness. I have a number of exhibits  
8 that we'd like to give to the Court to allow you to follow  
9 on ---  
10 THE COURT: Yes.  
11 MR. SAMSÓN: --- during the course of presentation,  
12 these exhibits? Were you planning on introducing each of  
13 these exhibits?  
14 MR. SAMSÓN: Yes, during the course of the witnesses'  
15 testimony.  
16 THE COURT: And is this for all of the witnesses?  
17 MR. SAMSÓN: Yes, your Honor.  
18 THE COURT: All right. What are the exhibits that you  
intended to introduce during the first witness?

7 15 that Mr. Constant is resident in the Suffolk County Jail.  
8 THE COURT: All right. Thank you. Is there anyone  
9 present in the courtroom who is Mr. Constant or is his legal  
10 representative or is appearing on his behalf? All right.  
11 Nobody is stating that they are Mr. Constant or representing  
12 him.  
13 Now, the parties are also aware, because I copied  
14 them, on a letter to the legal adviser of the State Department  
15 dated August 16, giving the State Department the formal notice  
16 of the existence of this litigation and the hearing on damages.  
17 And I wrote, quote, should the government wish to be heard in  
18 any way in this litigation, see Banco Nacional de Cuba v.  
19 Sabbatino, 376 U.S. 398, 1964. Please respond to this letter  
20 before the damages hearing commences on August 29, end quote.  
21 Yesterday my chambers received a letter from assistant  
22 United States Attorney Neil Corwin in which he states that only  
23 yesterday did the letter find its way to the appropriate person  
24 in the State Department, and the United States was requesting  
25 that it be given 30 days to determine whether it wishes to be  
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HEARING

1 68TGD0EH  
2 heard in this matter.  
3 seeking an adjournment of this hearing. And I had endorsed  
4 the letter. It shows, by the way, copies to Ms. Green and  
5 Ms. Pa, and I endorsed that letter yesterday as follows: The  
6 government should have that letter September 28th in which to respond  
7 to the Court's August 16 letter.  
8 So we will proceed with the hearing today, but I will  
9 not enter a judgment until after I hear from the government, if  
10 they intend to respond.  
11 MR. SAMSÓN: Your Honor.  
12 THE COURT: Yes.

19 MR. SAMSÓN: 1 through 5 will be --- pardon me. 1  
20 through 6 will be through Mr. McGuire.  
21 THE COURT: All right.  
22 MR. SAMSÓN: Exhibit 7 and Exhibit 8 will be presented  
23 through Mary Fabri, and the three-hole punch copy in the  
24 binder has redacted information about the witnesses' names and  
25 specificity as to where they live. And in the attached  
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HEARING

1 68TGD0EH  
2 envelope that is sealed is the unredacted version of  
3 Dr. Fabri's report.  
4 THE COURT: All right.  
5 MR. SAMSÓN: And finally, your Honor, with the Court's  
6 permission, I would like to make just a short opening  
7 statement.  
8 THE COURT: All right.  
9 MR. SAMSÓN: Thank you, your Honor. Your Honor, the  
10 Court's August 16th order granting the motion for judgment by  
11 default essentially makes all of the allegations alleged in the  
12 complaint true and correct. So there is no need today to prove  
13 the facts of the complaint.  
14 But we believe that this hearing has two main  
15 purposes. First is to give the plaintiffs --- all of the  
16 plaintiffs their day in court. The AIS and the VPI, the  
17 Torture Victim Protection Act, gives the plaintiffs the right  
18 to a day in court, and that's something that these plaintiffs  
19 never had before. We've had them tell us, constantly, but we think  
20 in this case, we've done them. And this opportunity to  
21 appear in a United States courtroom and present the facts of  
22 their trauma before this Court is of immense value.  
23 Secondly, this proceeding provides the Court with the  
24 testimony, with information to allow the Court to determine the

25 appropriate amount of compensatory and punitive damages.  
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180  
68TGD0EH Opening - Mr. Samson  
1 In order to do that, we are going to call five  
2 witnesses. The first witness will be professor Robert McGuire,  
3 and Professor McGuire is going to address several areas:  
4 First, the background of Haitian history and the defendant's  
5 role in creating and leading the paramilitary organization  
6 known as FRAPH, F-R-A-P-H. It's an acronym that the doctor  
7 will explain and pronounce FRAPH. Second, he will talk about  
8 the defendant's command and control of FRAPH. Third, he will  
9 talk about FRAPH's systematic campaign of violence, including  
10 rape and torture as political weapons against opponents of the  
11 military government in Haiti.  
12 Finally, Dr. McGuire will explain why there is no  
13 adequate legal remedy in Haiti by which the plaintiffs can seek  
14 redress for the injuries that were done to them.  
15 This testimony, especially the defendant's role in  
16 FRAPH, his leadership role and FRAPH's systematic use of rape  
17 and violence, is very relevant to the Court in determining the  
18 appropriate amount of punitive damages.  
19 Our next two witnesses will be Jane Doe I and Jane Doe  
20 II, who the Court has allowed to testify using pseudo names.  
21 Their testimony will be very direct, and it will be very  
22 poignant and speak for itself.  
23 Our next witness will be Dr. Benjamin Lerman, who will  
24 be testifying as counsel for plaintiffs Jane Doe I and II.  
25 PHYSICIAN WHO HAS EXAMINED THE PLAINTIFFS JANE DOE I AND II.  
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68TGD0EH Opening - Mr. Samson

13  
ROBERT MCGUIRE,  
7 called as a witness by the Plaintiff's,  
8 having been duly sworn, testified as follows:  
9 THE LAW CLERK: Please state your name and spell your  
10 last name for the record.  
11 THE WITNESS: My name is Robert E. McGuire,  
12 M-C-G-U-I-R-E.  
13 THE COURT: All right. Please be seated. Good  
14 morning, sir, and welcome.  
15 THE WITNESS: Thank you.  
16 THE COURT: Your witness.  
17 MR. SAMSON: Thank you, your Honor.  
18 DIRECT EXAMINATION  
19 BY MR. SAMSON:  
20 Q. Professor McGuire, can you tell the Court your occupation,  
21 please.  
22 A. Yes, sir. I am director of the Trinity University Haiti  
23 program, and at the university I'm also the chair of the  
24 international affairs program.  
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13  
68TGD0EH McGuire - direct  
1 Q. Can you describe for the Court your educational background,  
2 please?  
3 A. Yes, sir. I have a bachelor's degree in social studies  
4 secondary education from Trenton State College in Trenton, New  
5 Jersey, a master's degree from the University of Florida in  
6 Latin American Studies and a doctorate in  
7 geography from McGill University in Quebec.  
8 I began the course of your academic career, have you tended to  
9 specialize in any particular area or subject of interest?  
10 A. Yes. Regionally as a geographer, I've specialized in  
11 Caribbean, particularly in Haiti.  
12 Q. And when you say specialized in Haiti, can you describe for

12  
He will describe the physical injuries that they suffered and  
describe the ongoing physical effects that they continue to  
suffer.  
Our last witness will be Dr. Mary Fabri. Dr. Fabri is  
a psychologist, and she has also examined plaintiffs Jane Doe I  
and Jane Doe II. She will describe the ongoing psychological  
trauma that they have had to live with since 1994 and describe  
the extent of that trauma on an ongoing basis.  
At the conclusion of the testimony, we believe that  
the Court will have information that will provide it with a  
background and a context to understand the defendant's role in  
perpetrating these terrible crimes against the plaintiffs. The  
Court will have a better understanding of the scope and extent  
of plaintiffs' physical and psychological injuries to help the  
Court in determining what is an appropriate amount of punitive  
and compensatory damages in this case. Thank you, your Honor.  
THE COURT: All right. Thank you, sir. I certainly  
understand the necessity of -- the desirability of allowing the  
plaintiffs to have their day in court, and due to the default  
of Mr. Constant, I brought on this request on damages.  
I would like the evidence to focus on the defendant's  
role in what you say is the campaign of violence, rape and  
torture and his role in FRAPH, because that's what I'm focusing  
on. He's the defendant. I don't need a great deal of  
background of, for example, Dr. McGuire. I think that evidence  
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12  
68TGD0EH Opening - Mr. Samson  
1 Can come in rather efficiently. If we can finish up today, we  
2 will. If we can't, we'll go over a little bit tomorrow.  
3 Call your first witness.  
4 MR. SAMSON: Thank you, your Honor. I call Robert  
5 McGuire first, please, your Honor?  
6 THE LAW CLERK: Raise your right hand.

14  
the Court the scope of your studies and the scope of your  
expertise in that area?  
A. Yes. My expertise is focused very broadly on Haiti. It  
began in looking at issues of economic development among the  
Haitian poor people, and it has expanded through my work to  
look at all aspects of Haitian society, including the political  
and economic characteristics, the public safety characteristics  
and foreign policy characteristics.  
Q. Have you been involved with an agency known as the  
Inter-American Foundation?  
A. Yes I have.  
Q. Can you explain for the Court what that is, please.  
A. The Inter-American Foundation is a small U.S. Government  
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14  
68TGD0EH McGuire - direct  
1 agency mandated and funded by Congress to provide development  
2 assistance programs to local organizations in Latin America and  
3 the Caribbean. I worked at the Inter-American Foundation for  
4 20 years from 1979 to 1999 as its resident expert and  
5 responsible officer for programs in the Caribbean, specifically  
6 and including Haiti.  
7 Q. And prior to taking a position at Trinity University, what  
8 other academic appointments have you held?  
9 A. I have had an appointment at Johns Hopkins University as a  
10 visiting scholar, and I've worked as an adjunct professor at  
11 Georgetown University.  
12 Q. Have you ever consulted with the U.S. Department of State  
13 or any other government agencies?  
14 A. Yes. In fact in the year 2000, I was sent by my  
15 organization, Inter-American Foundation to the State  
16 Department as requested to become the special projects manager  
17 for Haiti in the State Department's bureau of western  
18 hemisphere affairs. I retired from the government in 2000 and

19 went to Trinity University, and in the interim period I have  
20 consulted with a number of government agencies.  
21 Q. Can you describe the Haiti program that you founded?  
22 A. Yes. The Haiti program was founded in 1994, with funding  
23 from the Ford Foundation as a program in Washington that would  
24 enable government officials and others with an interest in  
25 Haiti to receive and discuss and analyze objective information  
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18  
68TGD0EH           McGuire - direct  
1           On what was going on in Haiti and issues related to U.S.-Haiti  
2 policy. We held meetings, we published briefing papers, and we  
3 also made ourselves available to interested individuals who  
4 wanted to know more about Haiti as requested.  
5 Q. And have you been to Haiti yourself?  
6 A. I've been to Haiti many times, yes.  
7 Q. Approximately how many?  
8 A. Well, from 1979 to 1999, I traveled to Haiti at least four  
9 or five, sometimes six or more times a year. And, frankly,  
10 when it reached about a hundred trips, I stopped counting.  
11 Q. Do you speak Creole?  
12 A. Yes, I do. I speak Creole, I read Creole, and to a limited  
13 extent I write Creole.  
14 Q. Have you written any books or articles about Haitian  
15 paramilitary organizations or the Haitian armed forces?  
16 A. Yes, I have. I've published extensively on many topics on  
17 Haiti, some 60 or so book chapters, books, articles, reviews  
18 and the public, especially in Haiti, the relationship of the  
19 Haitian military with paramilitary organizations.  
20 Q. Have you consulted with any government agencies about the  
21 Haitian armed forces or Haitian paramilitary organizations?  
22 A. Yes, I have. I was particularly active in the 1990s when  
23 there was a great demand for this information. I was requested

1 I should say that over the past 20 or more years, I have  
2 maintained a very close archive of newspaper articles published  
3 on Haiti and my other personal sources. And I've also  
4 reviewed, over time, my interviews with various people on the  
5 ground in Haiti who are pertinent to the issue of Haiti.  
6 Q. Are the materials that you have reviewed and the documents that  
7 that you have described, are these the kinds of documents that  
8 a social scientist would generally review in forming opinions?  
9 A. Yes, they are.  
10 Q. Have you reviewed the complaint in this matter?  
11 A. I have reviewed the complaint, yes.  
12 Q. Have you reviewed a deposition given by the defendant,  
13 Mr. Constant, in June of 1995 in a different case?  
14 A. Yes, I have.  
15 Q. Have you ever met the plaintiff in this action?  
16 A. I was introduced to them just yesterday.  
17 Q. Dr. McGuire, I'd like to first outline your opinions for  
18 the judge.  
19 THE COURT: I have the expert report of Mr. McGuire  
20 that lists the opinions that he expressed so --  
21 MR. SAMSÓN: All right. Maybe we can just put all  
22 five of them on the board.  
23 THE COURT: Why don't you -- is the expert report one  
24 of your exhibits, Mr. Samsón?  
25 MR. SAMSÓN: It is not, your Honor.  
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18  
68TGD0EH           McGuire - direct  
1           I'll accept it as one of the exhibits. What number do you want  
2 to call it?  
3 MR. SAMSÓN: Exhibit No. 9, please, your Honor.  
4 THE COURT: All right. Fine. This will be then --  
5 it's the expert report of Dr. McGuire as given to me by the  
6

25 to consult in the White House with the National Security  
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16  
68TGD0EH           McGuire - direct  
1           Council in 1993. In 1994, I was requested to consult with the  
2 Joint Chiefs of Staff in their preparatory actions toward the  
3 intervention in Haiti. And subsequently, and up until last  
4 year, I was asked to consult with the U.S. Southern Command on  
5 issues related to public safety in Haiti.  
6 MR. SAMSÓN: Thank you. Your Honor, I would move to  
7 have Professor McGuire qualified as an expert in contemporary  
8 Haitian and political and social history.  
9 THE COURT: Well, I'll allow you to ask opinion  
10 questions in that regard. Proceed.  
11 MR. SAMSÓN: Thank you.  
12 Q. Professor McGuire, before we get to the opinions, I'd like  
13 to get some foundation for the materials that you have reviewed  
14 in forming the basis of your opinions. Can you tell the Court  
15 generally what materials you have looked at in forming the  
16 basis of the opinions that you're going to give here today?  
17 A. Yes. Generally, I've looked at a wide array of published  
18 material, which includes reports of the U.S. Government, State  
19 Department in particular, reports from leading human rights  
20 organizations, reports from the United Nations and the  
21 organizations of American States. I've reviewed other published  
22 sources, including books and articles on Haiti. I have  
23 reviewed the North and Justice Commission report of the  
24 national -- the Haitian national and justice commission  
25 report. I have reviewed the Dan Personne and Justice Commission  
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17  
68TGD0EH           McGuire - direct  
1           plaintiffs.  
2 MR. SAMSÓN: Thank you, your Honor.  
3 THE COURT: Admitted.  
4 (Plaintiffs' Exhibit 9 received in evidence)  
5 BY MR. SAMSÓN:  
6 Q. I haven't identified the graphic as an exhibit, but let me  
7 ask you, Doctor, is it essentially the essence of your opinion  
8 that Mr. Constant was the founder and the head of FRAPH?  
9 A. Yes, it is.  
10 Q. And is it also your opinion that FRAPH was a military  
11 organization comprised of Haitian military?  
12 A. Yes, it is.  
13 Q. Is it also your opinion that FRAPH did the military's dirty  
14 work in using terror and intimidation tactics?  
15 A. Yes, it is.  
16 Q. Is it your opinion that the defendant, Mr. Constant, either  
17 knew or should have known of the illegal acts perpetrated by  
18 FRAPH members and failed to take reasonable measures to  
19 prevent --  
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19  
68TGD0EH           McGuire - direct  
1           A. Yes, it is. If I could just stress here that this opinion  
2 is based upon very strongly the fact that I view Mr. Constant  
3 as the adjunct provocateur, in French, or the chief provocateur  
4 of the illegal activities in FRAPH.  
5 Q. We'll get to that in a minute. Can you explain a little  
6 bit more -- what do you mean about that?  
7 THE COURT: Mr. Samsón, please speak in the  
8 microphone -- if you would, because this is being recorded.  
9 Q. And finally, is it your opinion, Mr. McGuire, that there  
10 are no adequate legal remedies in Haiti by which the plaintiffs  
11 can seek redress of the crimes committed against them by FRAPH?  
12 A. Yes, it is.

13 0. Thank you. Can you explain — if you want to reference the  
14 timeline that's on the chart, or if it's easier to read, if we  
15 can have that up on the screen.  
16 Let me ask you, Mr. McGuire, was this timeline  
17 prepared based on input provided by you?  
18 A. Yes, it was.  
19 THE COURT: Do I happen to have a copy of that?  
20 MR. SAMSÓN: You should, your honor. It's No. H.  
21 THE COURT: All right. Thank you.  
22 0. Could you describe or explain to the Court what the meaning  
23 is of the word "FRAPH"?  
24 A. Yes. FRAPH is an acronym which was developed first and  
25 then was given meaning afterwards to stand for the Front for  
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20  
68TGD0EH McGuire - direct  
1 the Advancement and Progress of Haiti, but the important thing  
2 to understand about FRAPH is that it also — in the Creole  
3 language the word "FRAPH" means a severe blow, this  
4 indicating, this is what FRAPH means. And I believe that  
5 FRAPH is an example where the acronym was created first and  
6 then the name came later. And, in fact, underscoring that is  
7 the fact that in the middle of 1994, Mr. Constant changed the  
8 meaning of FRAPH from its original meaning to mean that it was  
9 the Haitian people's armed revolutionary front, but it kept the  
10 same acronym, and that's what was important.  
11 0. Now, if you look on the upper left quadrant of the  
12 timeline, if you pursue the court's directions, I want to  
13 make the point very quickly, but in the upper right quadrant,  
14 would it be fair to say that you have outlined a series of  
15 events related to political activities in Haiti from the  
16 period, say 1957 through 1990?  
17 A. That's right. This just indicates that the dictatorship of  
18 François "Papa Doc," his son Jean-Claude "Baby Doc" Duvalier

25 Mr. Constant, in what is generally called the poorest country  
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22  
68TGD0EH McGuire - direct  
1 in the hemisphere, was accorded an elite education, attending  
2 schools in the French department of Guadelupe and in Canada,  
3 which is beyond the bounds, of course, of the vast majority of  
4 Haitians. And I should add that Mr. Constant's family was not  
5 born into wealth. It was a modest family, so it came into  
6 wealth through its association with the dictatorship.  
7 And Mr. Constant, following the completion of his  
8 education, was immediately awarded a very important post in the  
9 Haitian embassy in Ottawa, Canada as commercial attaché.  
10 Following that, he was awarded another post at the Haitian  
11 mission to the United Nations as first secretary of the  
12 mission. So I just want to show that Mr. Constant was very  
13 much plugged into the benefits emanating from those who were  
14 supportive of the Duvalier dictatorship.  
15 0. Now, looking again at the upper right-hand quadrant of the  
16 timeline for background for the Court, could you explain what  
17 happened after the Duvalier dictatorship was overthrown in  
18 February of 1986 up through December of 1990?  
19 A. Yes. When the Duvalier dictatorship fell, for most  
20 Haitians it was what was being called Haiti's second  
21 liberation, that following its own independence in 1984, and  
22 there was a great expectation that the country would be able to  
23 move ahead to become a more democratic and inclusive society  
24 and the fear and terror of this period of time would be removed.  
25 However, during this period of time, these four years,  
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19 lasted from 29 years from 1957 to 1986.  
20 0. And what happened in 1986?  
21 A. In 1986, the Duvalier dictatorship fell, and the dictator  
22 Jean-Claude Duvalier and his immediate entourage fled to  
23 France.  
24 0. How would you characterize — again, briefly, but just to  
25 give the Court some background, how would you characterize the  
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21  
68TGD0EH McGuire - direct  
1 social or political structure in Haiti under the Duvalier  
2 regime?  
3 A. It was a very repressive and violent France society where  
4 the enemies of the dictatorship were treated very harshly. For  
5 the vast majority of Haitians who had no access to economic  
6 resources, it was a time of repression and fear and violence.  
7 And, in fact, Haiti became known under the Duvalier  
8 dictatorship by many scholars as a predatory state. That would  
9 be a government that preys upon its people.  
10 0. Now, let me ask you to look at the lower left-hand quadrant  
11 where you show a picture of Mr. Constant indicating his birth  
12 and going to school and then the jobs that he held. Is that  
13 correct?  
14 A. That's right.  
15 0. And what is the purpose in showing this information?  
16 A. Well, I think first we just have to note that on top of the  
17 father, General Gérard Constant, who is the defendant "Papa  
18 Doc", was appointed that same year elected himself president  
19 for life. So Mr. Constant Emmanuel Constant, was born into a  
20 family with very close ties to the dictatorship, was born into  
21 what I'm showing in the bottom half of this quadrant  
22 is that, as a result of those very close ties which brought  
23 with it access to power and privilege and resources,  
24

1 there was a great deal of conflict in Haiti between those who  
2 wished to maintain the status quo of the dictatorship, or what  
3 was called Duvalierism, without Duvalier, a small group, and  
4 those who benefited from the dictatorship and the larger group  
5 who wished to move away from the dictatorship into  
6 representative government. And during this four-year period  
7 here, you had successive military governments that ruled the  
8 country, and sometimes quite harshly.  
9 0. And what happened in December of 1990, the period that's  
10 marked with a blue band?  
11 A. In December 1990, there was an election in Haiti, a  
12 national election, monitored very carefully by the U.S. and the  
13 UN and other international observers, mainly to keep the  
14 Haitian military out of the election. And at that time a  
15 reform candidate named Jean-Bertrand Aristide was  
16 overwhelmingly elected president of Haiti.  
17 0. And when Mr. Aristide became president in 1990, how did  
18 that change the relationship with the political military elites  
19 in Haiti?  
20 A. Well, Mr. Aristide's platform was one of greater inclusion  
21 of all Haitians in the society and to remove the impunity and  
22 privileges of those who controlled the state. So therefore,  
23 his supporters were very anxious for the state to open up and  
24 become one of more social and economic justice, but those who  
25 had benefited from the dictatorship in the military rule were  
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68TGD0EH McGuire - direct  
24  
1 very fearful of Mr. Aristide's ascension to power.  
2 0. And for what reason?  
3 A. Well, basically because their privileges and access and  
4 control to wealth would not — would be taken away from them.  
5 This was particularly true of those not born into wealth but  
those who depended upon an authoritarian-type government to

7 have access to the state.  
8  
9  
10 Q. Did this include -- or would this have included  
11 Mr. Constant's family?  
12 A. It certainly would have. Mr. Constant, as I mentioned  
13 earlier, was a direct beneficiary of the dictatorship. People  
14 like him received checks, monthly checks. They were known in  
15 Haiti as the zombie checks, because they were cut to people who  
16 had no physical presence in a government. They were just kind  
17 of beneficiary checks. And Mr. Constant himself in his  
18 deposition acknowledges that it was after the election of  
19 Aristide as president that for the first time in his life he  
20 was out of work.  
21 Q. Do you show that anywhere on the timeline?  
22 A. No. It's just that he returned to Haiti in 1990 and stayed  
23 there for a while, and then that's the period after Aristide  
24 was elected that he was removed from his government position.  
25 Q. Now, I'd like to focus on the period from September 1991,  
when you indicate there was a coup d'etat against President  
Aristide, through October of 1994 when President Aristide was  
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25  
68TGD0EH McGuire - direct  
1 returned in power by the United Nations.  
2 A. Yes. This period of approximately three years was a period  
3 of de facto military rule in Haiti where the elected government  
4 was overthrown by a military coup, and throughout that  
5 four-year period the military ruled Haiti with a very iron  
6 fist.  
7 Q. And when you say de facto military rule, can you explain  
8 what you mean by that?  
9 A. Well, it was not a de jure government. In other words, it  
10 was not legitimate. It was not recognized by any nation in the  
11 world. It was a government that came in through a coup d'etat,  
12 a strike against the state.

19 second-generation Ton Ton Macoute nationally organized,  
20 monitoring the population for opposition to the military  
21 government and also inflicting terror on the population.  
22 Q. Can you explain to the court, what does the term "Ton Ton  
23 Macoute" mean or stand for?  
24 A. "Tonton" means uncle in Creole, and "Tonton Macoute" is a  
25 folklore character in Haiti, a sinister character who comes in  
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68TGD0EH McGuire - direct  
1 the middle of the night and steals children from their homes.  
2 Q. So it has a bad connotation?  
3 A. A very sinister, frightening connotation, yes.  
4  
5 Q. We have displayed on the screen a graphic that's exhibit or  
6 graphic D in the exhibit book, and I wonder if you could  
7 explain what this depicts, please, Mr. McGuire?  
8 A. Yes. This is a circular chart with three entries on the  
9 top and one on the bottom. Those on the top are the three  
10 leaders of the de facto military regime: Colonel Michel  
11 Francois, who was the head of the police; Brigadier General  
12 Raoul Gedeas, the head of the army; and his second in command,  
13 Brigadier General Philippe Blainy.  
14 I would like to clarify, however, that in this  
15 structure the police is not an independent entity. Rather, the  
16 police was one of the core of the military of the Haitian army.  
17 In other words, it was actually part of the army, not separate from  
18 it. And that's what I'm talking about when I say Mr. Constant  
19 tried to symbolize FRAPH and tying all these things together.  
20 Together, the top of them is a red and black flag of Haiti.  
21 Before we get to the flag, let me just ask you a question.  
22 What are you trying to show in terms of the relationship  
23 between the armed forces, which includes the police, and  
24 Mr. Constant and FRAPH?

13 I'd like to turn next to the foreign nation of FRAPH, and  
14 if we look on the lower right-hand corner, right-hand quadrant  
15 of the timeline, you show that in 1992, director of government  
16 welfare office. Is that referring to a position held by  
17 Mr. Constant?  
18 A. Yes. Once the elected government was overthrown,  
19 Mr. Constant found himself in the business of having a position  
20 in government again. He was friendly with the leader of the  
21 government, the military government, and he was appointed in  
22 1992 as the director of the government welfare office. This  
23 gave him a post from which to have the creation -- from which  
24 to create a national network within the government welfare  
25 office of bureaus around -- offices around the country, which  
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1 then laid the foundation for him ultimately to create FRAPH as  
2 a national organization.  
3 Q. And what was the stated goal in the creation of FRAPH?  
4 A. The stated goal of FRAPH -- there wasn't any kind of a  
5 mission statement that was published, but through the  
6 pronouncements of Mr. Constant, the stated goal of FRAPH was to  
7 make sure that the elected president would never return to the  
8 country and --  
9 Q. Do you mean Mr. Aristide?  
10 A. Mr. Aristide would never return to Haiti.  
11 Q. And was there a model for the formation of FRAPH?  
12 A. Yes, indeed, it would have. I mean, FRAPH was a paramilitary  
13 organization, and I would have, I mean, FRAPH was a paramilitary  
14 modeled on a paramilitary organization created by Francois  
15 Duvalier, the infamous Ton Ton Macoute. The Ton Ton Macoute  
16 was the national organization that terrorized the population  
17 and monitored the population, particularly looking for a kind of a  
18 of opposition to the dictatorship, and FRAPH became a kind of a

25 A. I'm trying to show here that Mr. Constant was taking orders  
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1 and command from the military and that he was doing the dirty  
2 work of the military.  
3 I should add here, perhaps for clarification, that  
4 initially after the elected government was overthrown, soldiers  
5 were visibly seen in the streets of Haiti engaged in violent  
6 acts, but it became in the interest of the government for  
7 soldiers not to be seen in the streets, because this would  
8 undermine the military's government attempt to legitimize  
9 itself. So therefore, it increasingly called upon free agents,  
10 if I could say so, or ununiformed perpetrators of violence to  
11 do its dirty work so its uniformed soldiers would not be viewed  
12 as terrorizing the population.  
13 So therefore, the fact that Mr. Constant is underneath  
14 them in this graph indicates that he was the man who was  
15 orchestrating the dirty work, the ununiformed violence that was  
16 going on to do the military's business.  
17 Q. I interrupted you when you started to explain something  
18 about the flag.  
19 A. Yes. Haiti's flag is actually blue and red. It was  
20 transformed into a black and red flag by the Duvalier  
21 dictatorship for its own purposes. When that dictatorship fell  
22 in 1980, the flag was transformed back to its original color of  
23 blue and red, and under the de facto military government,  
24 there was an effort, I think, led by FRAPH, to create the black  
25 and red flag as a symbol of the Duvalier dictatorship and all  
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1 that it represented.  
2 0. Let me ask you to look at Exhibit No. 1, if we could,  
3 please. If you could describe what Exhibit No. 1 is please.  
4 A. Yes. Exhibit No. 1 is a cable from the military attaché,  
5 Defense Department representative in Port-au-Prince to the  
6 Defense Department and others in the U.S. Government in  
7 Washington.  
8 THE COURT: The Defense Department government in  
9 Port-au-Prince, do you mean the United States Defense  
10 Department representative?  
11 THE WITNESS: Yes. Yes. Sometimes called the  
12 military attaché to the embassy.  
13 THE COURT: I understand, but I didn't know whether it  
14 was a representative of the Haitian military or of the United  
15 States military.  
16 THE WITNESS: Yeah. It was a U.S. military  
17 representative in Haiti.  
18 By MR. SAMSON:  
19 0. And this is a document prepared by the U.S. military's  
20 attaché's office in Haiti?  
21 A. That's right.  
22 0. And sent to — do you know whom?  
23 A. Sent to his superiors in Washington who we would report to  
24 in the Defense Department, but this page here shows the whole  
25 list of offices in the U.S. government that would receive this  
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1 cable, most of them being Defense Department. But a copy of  
2 this cable would also go to intelligence organizations and  
3 ultimately to the State Department.  
4 0. If we could turn to the next page, please. Looking at the  
5 second page of Exhibit No. 1, there's — in the second  
6 paragraph, if you could highlight that. It begins with

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1 population.  
2 0. Is Exhibit No. 1 a document that you read and reviewed to  
3 form part of the basis of your professional opinion?  
4 A. Yes, it is.  
5 0. If we could turn to Exhibit No. 2, please. Just go to the  
6 second page. Thank you. If you could identify for the Court  
7 what Exhibit No. 2 is.  
8 A. Exhibit No. 2 is a memorandum from the CIA — the U.S. CIA  
9 representative or office in Haiti to Washington.  
10 0. And is this a document that you read and reviewed to form  
11 part of the basis of your professional opinion?  
12 A. Yes, I did.  
13 0. In the middle of page 2, there's a lot of redacting in  
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1 there, but right about the middle of the page it says, Army  
2 Chief Cetrans, Army Chief of Staff Blamny, and Police Chief  
3 Frankois have agreed to increase the funding of the rising far  
4 right party FRAPH to strengthen it for any future election.  
5 The rest of the sentence is redacted.  
6 Can you explain what you understood the portion of  
7 that sentence that I read to mean?  
8 A. Yes. I think this sentence has two very important aspects  
9 to it. First, through the fact that the military is — the  
10 military government is making decisions to increase the funding  
11 of FRAPH, it underscores very much the relationship between some  
12 sort of resource to the military. FRAPH alleged that some of  
13 the FRAPH payments were coming from state agencies such as the  
14 telephone company but this is a very clear indication that it  
15 was receiving funding from the army which of course was  
16 engaged in that predatory activity of taking resources from the  
17 people of Haiti. That's the first important part in here.

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1 just speak of FRAPH. So this shows that FRAPH was very closely  
2 connected to the military high command to undertake and mete  
3 out violence in the streets and among the people of Haiti.  
4 0. The Defense Department memo goes on to state they are a,  
5 quote, force multiplier, closed quote, while providing  
6 plausible reasons for this force multiplier providing.  
7 A. Yes. Well, this goes back to military statements to add  
8 that you know, FRAPH could do the dirty work under the cover  
9 of darkness or even in broad daylight; and not being in  
10 uniform, it would provide the military with the possibility of  
11 denying that it was engaged in these kinds of acts against the  
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68TGD0EH McGuire — direct  
1 Aristide and were very, very adamantly against de facto  
2 military rule, but it also indicates that FRAPH was receiving  
3 funding as a political party, in the sense that FRAPH would be  
4 the muscular part of any kind of political intimidation.  
5 You see, if you go back to those four years from '86  
6 to '91, there were elections in Haiti at that time, although  
7 Haitians call them selections, because the military was able,  
8 through intimidation and use of force, to predicate what the  
9 outcome of those elections would be, and this indicates that  
10 the military would have seen FRAPH as a similar tool, should  
11 they have succeeded in holding elections under their de facto  
12 rule.  
13 0. I'd like to turn, if we could, turn to the organization of  
14 FRAPH.  
15 MR. SAMSON: Your Honor, I'm going to be showing  
16 Exhibit I. And what I'd like you to — well, first let me ask, was  
17 Exhibit I prepared based on information provided by you?  
18 A. Yes. I prepared based on information provided by you?  
19 0. And I wonder, if you could explain to the Court — this is  
20 an exhibit that rolls up  
21 and at the top of the structure was a central committee with  
22 three to five self-appointed members. Mr. Constant was the

33  
68TGD0EH McGuire — direct  
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17 Exhibit I prepared based on information provided by you?  
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20 an exhibit that rolls up  
21 and at the top of the structure was a central committee with  
22 three to five self-appointed members. Mr. Constant was the

25 secretary general of the organization, and there were others on  
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2 the committee from time to time, but he was the key person  
3 always on the committee.  
4 And it also indicates what the committee's  
5 responsibilities are or were to coordinate activities with the  
6 armed forces, to issue membership cards to people wishing to  
7 join FRAPH, and Mr. Constant has acknowledged that only he had  
8 the seal for the membership cards. The central committee  
9 established and inspected the departmental regional offices,  
10 paid visits to those in other offices, planned activities and  
11 was instrumental in communicating the organization's activities  
12 and objectives.  
13 Q. Let's look at the next level of organization under the  
14 central committee. Can you explain that, please.  
15 A. FRAPH, as I mentioned, it was a national organization, and  
16 that included a creation of 11 departmental offices. Haiti is  
17 divided in departments like the U.S. is in states. There were  
18 nine departments, and there were two of these offices in  
19 Port-au-Prince as the most populace department. Each office  
20 was headed by a regional director appointed by the committee.  
21 These, I would argue, were people who were connected with  
22 constant through his prior work as the welfare director when he  
23 established that decentralized network, and this committee's  
24 responsibilities are listed here on the chart. I don't know if  
25 you want to see that and then we can see.

THE COURT: I can see.  
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7 block. Some people were joining it to avoid being set upon by  
8 the bully.  
9 And interestingly, this did include, apparently, some  
10 people who had formerly supported the elected government, and  
11 these people served as spies, in the sense that they could  
12 identify to FRAPH where the location of some of the key  
13 Aristide supporters would be located.  
14 Q. If one joined FRAPH, did one get paid or get any sort of  
15 perks or benefits?  
16 A. Well, there was no salary for joining FRAPH. It was not a  
17 paid position. But, again, like the Ton Ton Macoute, when you  
18 were a member of this paramilitary organization, you could act  
19 with impunity against the law. There will be no punishment  
20 meted out to you for your acts, as long as you were serving the  
21 interests of the military government.  
22 THE COURT: I don't know what that means. Do you mean  
23 that somebody who is a member of FRAPH in the local office  
24 could commit robbery or assault without facing punishment by  
25 the police?  
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1 THE WITNESS: As long as the police would perceive  
2 this as being in their interest, yes. And since FRAPH was  
3 principally established to terrorize and intimidate political  
4 supporters of the deposed government, there was no way that  
5 they would be arrested or punished by the police.  
6 Q. Well, there's one other document in FRAPH. If  
7 we could look at Exhibit J, please. Does Exhibit J represent  
8 your professional conclusions with regard to Mr. Constant's  
9 role in FRAPH?  
10 A. Yes, it does.  
11 Q. And briefly, could you just read those for the record,  
12 please.

1 0. The Court has the document.  
2 And then if we could roll down the lowest level of  
3 organization.

4 A. In the lowest level, the local and neighborhood offices, by  
5 Mr. Constant's own admission in his deposition, there were 297  
6 of these local offices. They were located in villages and  
7 towns around Haiti and, very importantly, in the slum areas in  
8 the populated neighborhoods in the city. It struck me that one  
9 of these neighborhood offices, local offices was actually  
10 established in the Haitian state hospital as well with the goal  
11 of keeping an eye on FRAPH's victims when they were admitted to  
12 that hospital.  
13 Q. You said that — I believe you said that these were  
14 established also in some of the poorest neighborhoods.  
15 A. That's right. These were established in some of the slum  
16 areas where there was a strong support of a deposed elected  
17 government led by Aristide.  
18 Q. And what was the reason for putting FRAPH offices in those  
19 neighborhoods?  
20 A. Well, this was, again, a very similar strategy, as the Ton  
21 Ton Macoute followed in prior generation, but it would be a  
22 way of keeping an eye on the community, and they would serve as  
23 bases of operation from which those — and acting in terror,  
24 including mobilize and move out from.  
25 Q. Let me ask you about the people that joined FRAPH, became  
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1 68TGD0EH McGuire - direct  
2 members. First, how did one become a member?  
3 A. Well, as a rule, one became a member through an affiliation  
4 with Constant or others related to the de facto government and  
5 volunteered or joined. There are reports of people being more  
6 or less coerced to join, in the sense that protecting their own  
7 self-interest. In other words, FRAPH was the big bully on the  
8 block.  
9 In coming to this opinion about Mr. Constant's role,  
10 his leadership role in founding and controlling FRAPH, did you  
11 rely at all on Mr. Constant's depo taken in June 1995 in a  
12 different action?  
13 A. I certainly did rely on it. However, I just want to stress  
14 that throughout this period, I was traveling back and forth to  
15 Haiti, and although the organizations that were trying to do  
16 economic and social development couldn't function very well, I  
17  
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1 68TGD0EH McGuire - direct  
2 was still able to meet with individuals affiliated with these  
3 organizations. And this is the basis of my understanding of  
4 FRAPH from these people who saw it on the ground and reported  
5 to me in and my associates in Haiti what was going on. But  
6 Mr. Constant's deposition certainly did reinforce that  
7 understanding through his own words.  
8 Q. It was consistent with your field observations?  
9 A. Yes.  
10 MR. SAMSON: If we could turn to the first slide about  
11 Mr. Constant creating FRAPH.  
12 Q. You have a series of quotes, and could you explain to the  
13 court where these quotes are from?  
14 A. These quotes are from specific pages and lines, as cited  
15 on the Constant in the Constant deposition.  
16 Q. You're using Mr. Constant's words here to reinforce your  
17 opinion that Mr. Constant, in fact, created FRAPH?  
18 A. Yes, I am.  
19 Q. There's a picture — we've got a better one later on, but

19 there's a picture of Mr. Constant. Is that correct?  
20 A. That's right.  
21 Q. And he's giving — showing a gesture. Can you show the  
22 court what that gesture is?  
23 A. Right. This became known as the FRAPH salute, and as I  
24 mentioned earlier, the FRAPH indicates a severe blow or punch.  
25 So the salute became a fist in the open hand to indicate what  
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1 FRAPH was all about.  
2 Q. And if you could turn to the next slide, "The defendant  
3 controlled FRAPH."  
4 A. That's right.  
5 Q. And can you describe for the court your understanding of  
6 Mr. Constant's control of the organization and the extent to  
7 which you've used quotes to illustrate that.  
8 A. There's no doubt in my mind that Mr. Constant exercised  
9 control over the organization. These citations here indicate  
10 that in his own words, and Mr. Constant was quite active in  
11 visiting the headquarters of the organizations and in granting  
12 the membership cards, in making officials to the departmental,  
13 regional organization, in making pronouncements on radio and  
14 television. And even though few Haitians have access to  
15 television, radio is a very, very important means of  
16 communication in Haiti. "I'm not a member of FRAPH. I'm a  
17 leader of FRAPH." And as that your understanding of  
18 Mr. Constant's role, both in the deposition as well as the  
19 field work that you have done?  
20 A. Yes, it is.  
21 Q. Yes, Mr. SAMSON: Next slide, please.  
22 Q. The next slide said the defendant represented FRAPH. What  
23 was your understanding of his role as the representative of  
24

1 this was his organization.  
2 Q. Can you give any examples of Mr. Constant's participation  
3 in any major FRAPH activities.  
4 A. Yes. I would just say two that are very notorious. The  
5 first one was in October of 1993 when a U.S. navy vessel called  
6 the Harlan County was coming into Haiti to deliver to the  
7 country a number of lightly armed Canadian-American troops who  
8 were going to serve as police trainers following an agreement  
9 that had been struck here in New York in Governors Island  
10 between the de facto government and the legitimate exiled  
11 government.  
12 Mr. Constant called on a demonstration against the  
13 disembarkment of these troops, and it was quite interesting  
14 talking to some of the human rights advisers who were on the  
15 ground at the time. They acknowledged that the people who went  
16 down for this disembarkment, who were not among Haiti's  
17 educational elite, went down the — they all had the same  
18 talking points, and they were the talking points that  
19 Mr. Constant had created or was the first person to speak of  
20 them. And that was the fact that this disembarkment was very  
21 soon after the tragedy for U.S. troops in Somalia, which we  
22 call Black Hawk Down, and the FRAPH personnel on the ground by  
23 the docks were all yelling that this was going to be another  
24 Somalia. It resulted in what Mr. Constant labeled in an  
25 interview on 60 minutes as his victory in his personal  
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1 confrontation with the U.S. Government. So that's one example.  
2 The other example would be the fire in 1993 in Lake  
3 Slum in Port-au-Prince called Cite Soleil, which was very much  
4 one of the areas where the support for Aristide was strongest.  
5 Q. Is that shown on the timeline?  
6

25 FRAPH?  
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2 A. Constant represented FRAPH before the press in the media,  
3 calling press conferences, making open pronouncements in  
4 speeches. He was always in FRAPH rallies. If he was there, he  
5 was the key spokesperson at the rally, mobilizing and exciting  
6 the crowd. And he acknowledged this himself.  
7 Q. And then the final slide on the organization, it says,  
8 "Defendant's leadership role in FRAPH expanded." Can you  
9 explain to the court what you mean by that?  
10 A. Yes. Mr. Constant at first acknowledged that he was a part  
11 of the committee, but he became the secretary general in early  
12 '94. And from May of '94 not only was he secretary general, he  
13 was virtually the only active member on the committee,  
14 particularly following a split he had with one of the other  
15 members on the committee. And I think this is important, in  
16 the sense that the timeline in that the acts perpetrated  
17 against the plaintiffs all occurred in the period after  
18 Mr. Constant became the secretary general and the penultimate  
19 almost exclusive officer of the organization.  
20 Q. Let's talk for a minute about how, as a practical matter on  
21 a day-to-day basis, Mr. Constant controlled FRAPH.  
22 A. Yes. Well, I think I mentioned this earlier that, you  
23 know, he held press conferences. He visited FRAPH offices. He  
24 FRAPH-sponsored marches, the ground at some of the  
25 FRAPH-sponsored marches and open acknowledging the fact that  
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1 A. It's shown on the timeline here, yes, in December of 1993  
2 the Cite Soleil fire.  
3 THE COURT: Is the instant of the troop ship the  
4 Harlan County incident?  
5 THE WITNESS: Yes. That's in 1993, the Harlan County  
6 incident. And this, in a sense, was FRAPH's coming-out party  
7 in October 1993. But in the Cite Soleil fire, there are many  
8 eyewitnesses who spotted Mr. Constant on the ground in the  
9 vicinity of the slum talking to and directing various members  
10 of FRAPH, who, in revenge for the fact that the citizens of  
11 Cite Soleil were against FRAPH and what it stood for, over a  
12 thousand homes were burned that evening, and over a hundred  
13 people were killed in the fire.  
14 Q. Let's talk about some specific FRAPH activities, specific  
15 operations of FRAPH. In addition to or maybe as part of doing  
16 the military's dirty work, was there any other specific goal or  
17 objective of FRAPH?  
18 A. Well, as I mentioned earlier, FRAPH's goal was to keep  
19 Mr. Aristide from returning, but its method in doing that was  
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2 to intimidate and strike terror and eliminate Mr. Aristide's  
3 supporters to the extent it could.  
4 Q. And what specific methods or techniques did FRAPH utilize  
5 to try and achieve that goal?  
6 A. According to information collected by me in my visits to  
7 Haiti, the reports in the French and Justice Commission and  
8 part of the UN and Organization of American States sponsor  
9 mission, FRAPH used a variety of tactics to intimidate terror  
10 and eliminate Mr. Aristide's supporters.  
11 Among them were murder, torture, rape, disappearance,  
12 and some of the specific techniques — one, for example, that

13 strikes me, because I know someone who was a victim of this, is  
14 something that Haitians call kiloma rasa (phonetic), which is  
15 where you get your hands and you strike heavily on both ears at  
16 the same time, piercing the eardrums, creating blood to flow  
17 down the victim's — from the victim's ears and create  
18 permanent damage to the victim's hearing.  
19 Q. Let me ask you the techniques that FRAPH used. You've  
20 listed murder, rape, torture. Were these kinds of things  
21 random and ad hoc, or were they systematic and part of the  
22 program?  
23 A. Well, one never knew from day to day where FRAPH would  
24 strike. So in that regard, it was random. But it was  
25 systematic in the sense that FRAPH's victims were exclusively  
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1 individuals who were either known activists of the  
2 democratically elected government or related to activists of —  
3 known activists for the democratically related government.  
4 Q. Have you ever heard the term "erasing" or having one's face  
5 erased?  
6 A. Yes. This was by the middle of 1994 a particularly brutal  
7 form of intimidation and terror and murder that FRAPH  
8 instituted in Haiti, and essentially at this time bodies of  
9 those murdered in the night were being left in the street as a  
10 message to other supporters of the democratically elected  
11 government. And one very notorious incident that I can recall,  
12 the victim's face was literally erased off by a machine so that the  
13 face was literally erased.  
14 Q. And is there any social psychological impact associated with  
15 of it, is there any social psychological impact associated with  
16 that?  
17 A. Yes, there is. Haiti is a very spiritual society, and  
18 treatment of the death — of the dead and enabling them to have

25 Q. And this is the same sort of thing that we saw Mr. Constant  
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1 giving a picture of?  
2 A. Yes, it is. Yes, it is.  
3 MR. SAMS0N: If we could turn to Exhibit 5, please.  
4 And Exhibit 5, your Honor, is an article from the Miami Herald  
5 dated July 14, 1994.  
6 Q. And was this an article read and reviewed by you?  
7 A. Yes, it is. It's the one on the left, your Honor, Haitian  
8 rights abuses — "Human Rights Abuses in Haiti Worsen."  
9 THE COURT: All right.  
10 Q. And did this form part of the basis of your professional  
11 opinion?  
12 A. Yes, very much so. In particular, you know, there were  
13 many —  
14 Q. If you could just — let me interrupt you for just a  
15 moment, if I could, please. At the very beginning it says the  
16 article is by John Shattuck, assistant Secretary of State for  
17 human rights, democracy and labor. He wrote this article for  
18 the Herald?  
19 A. That's right. And in my view, this gives the article  
20 particular weight, because it's not the journalist reporting on  
21 stories. It's a high-ranking official of the U.S. State  
22 Department expressing views that are certainly endorsed by the  
23 U.S. State Department in this op-ed piece.  
24 Q. The title of the way down, the first column, beginning  
25 with "today" through

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McGuire - direct

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19 a final peaceful resting place is very important. This  
20 disfigurement of faces, erasing faces was a way of both  
21 literally and figuratively making the opposition to the  
22 military regime disappear, and it left the onus on the family,  
23 haunting them that, because the face was disfigured this way,  
24 they could not send the dead off properly in the funeral  
rights, something that would haunt the family thereafter.  
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68TGD0EH McGuire - direct  
1 Q. So the soul sort of can't be laid to rest?  
2 A. Yes.  
3 Q. Let me ask you to look at Exhibit No. 4, please.  
4 MR. SAMS0N: And Exhibit No. 4, your Honor, is a photo  
5 from the April 16, 1994 Washington Post. Sorry. It's not a  
6 very good quality. It's the best we could get.  
7 Q. Professor McGuire, was there any particular way that FRAPH  
8 members could be identified, recognized?  
9 A. Well, you know, FRAPH — even back in the 1993, '94 period,  
10 FRAPH was being characterized by U.S. government officials as a  
11 terrorist group. And as we know from today, the terrorist  
12 groups don't wear uniforms. Part of their modus operandi to  
13 terrorize people is to be unidentified. So members of FRAPH  
14 did not identify themselves through a uniform, although there  
15 are reports that they sometimes had black and red markings or  
16 ribbons of something with them, the black and red, as I  
17 explained earlier, indicating the adherence to the Duvalier  
18 dictatorship period.  
19 But I think their most identifying markers were both  
20 the red and black colors, including in the flag, and that  
21 infamous FRAPH salute, which you can see in this photograph.  
22 There are four gentlemen there standing in the doorway of one  
23 of the FRAPH local offices giving that salute of the  
24 organization.

1 A. Yes.  
2 Q. If you could read that for the record, please.  
3 A. Yes. The assistant secretary wrote, Today Haiti's  
4 democratically elected government and its representatives are  
5 in exile or unable to exercise their authority. The military  
6 and their allies, the police, the attaches, the section chiefs,  
7 the Front for Advancement and Progress in Haiti, or FRAPH,  
8 which means punching blow in French, remain in power only by  
9 brute force, now thinly veiled by the bogus regime of anle  
10 Jonassaint.  
11 I should clarify that the military government put a  
12 number of civil puppets in office to front them, and this  
13 gentleman, Mr. Jonassaint, was the latest at that time who was  
14 anointed by the military government as the civilian front.  
15 Q. And on the right-hand column, if you could read that  
16 paragraph beginning with "human rights."  
17 A. Yes. Again, the assistant secretary of state wrote that,  
18 Human rights abuses have qualitatively and quantitatively  
19 worsened in recent months. Soldiers and armed thugs stage  
20 almost nightly raids on neighborhoods where many Aristide  
21 supporters live, raping the wives and children of political  
22 activists and critics of the regime, abducting young people and  
23 disfiguring victims' faces.  
24 Q. And was Mr. Shattuck's assessment here consistent with the  
25 opinion that you have formed  
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McGuire - direct

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1 A. Yes.  
2 Q. And did you rely, in part, in the formation of your opinion  
3 on the analysis by Mr. Shattuck?  
4 A. I relied in part and in other — by my own information. As  
5 I mentioned earlier, I was traveling to Haiti at this time. I  
6 was meeting with people from poor neighborhoods in rural

7 locates, and I was getting very much the same reports from  
8 these people as expressed in Mr. Shattuck's article.  
9 Q. Was rape -- rape is referred to in Mr. Shattuck's article.  
10 Was rape used as a political weapon by FRAPH?  
11 A. Yes, it was.  
12 Q. And what's the basis for your opinion in stating that?  
13 A. Well, in addition to knowing of this through my  
14 conversations with individuals from slum and small towns in  
15 Haiti, this was well documented in a series of reports by human  
16 rights organizations, by press releases and reports by the  
17 United Nations OAS International Civilian Mission, which was in  
18 Haiti to monitor human rights, and ultimately by State  
19 Department cables and statements themselves.  
20 Q. Are you familiar with an entity call the International  
21 Civilian Mission in Haiti?  
22 A. Yes, I am.  
23 Q. Can you explain to the Court what that is.  
24 A. Yes. The French acronym -- and it was better known by its  
25 French acronym as MICIVIH. In early 1993 the UN and the  
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68TGD0EH McGuire - direct  
1 Organization of American States formed this as a joint mission  
2 supported by the United States financially and politically to  
3 put on the ground in Haiti networks of not too many but a  
4 number of individuals who would be responsible for monitoring  
5 the human rights abuses perpetrated by the de facto military  
6 and the Organization of American States and more broadly to  
7 interested parties.  
8 Q. Was the International Civilian Mission in any way supported  
9 or funded by the United States?  
10 A. Yes, it was. It was endorsed by the United States and  
11 received U.S. government funds for its operations.  
12

19 Dateline Port-au-Prince, and this was a press release that was  
20 listed by the aforementioned OAS/UN International Civilian  
21 Mission in Haiti or what I call the MICIVIH.  
22 Q. If you can focus on the third and fourth paragraphs  
23 beginning "in the 12 cases of rape," those two paragraphs.  
24 A. Yes.  
25 Q. I'm wondering if you can read that, the three --  
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68TGD0EH McGuire - direct  
1 A. Okay. The nature of this press release was to focus on  
2 what the International Human Rights Mission noted as an  
3 alarming increase in rape in the earlier parts of 1994, and it  
4 specifies here that in the 12 cases of rape with political  
5 overtones, the scenario was always substantially the same.  
6 Armed men, often military or FRAPH members, burst into the  
7 house of a political activist to capture. When he is  
8 not there and the family cannot say where he is, the intruders  
9 attack his wife, sister, daughter or cousin. The mission feels  
10 particularly indignant about the disturbing number of  
11 collective crimes in which the victim is successively raped by  
12 several men. These --  
13 Q. Thank you. That's fine. You have read the complaint in  
14 this action?  
15 A. Yes, I have.  
16 Q. Are the allegations of the rape and the manner in which the  
17 rapes alleged occurred consistent with what is described in the  
18 report by the International Human Rights Mission?  
19 A. Yes, they are, and if I just might mention, remarkably  
20 consistent to me, with a news report in my personal archives  
21 published in the Washington Times following an investigative  
22 journalist visit to the same neighborhood that the plaintiffs  
23 are from, a place called Martizone where this journalist  
24 interviewed two women who acknowledged that they had been raped

13 Q. You said there was a reported increase in rapes in Haiti  
14 after FRAPH ascended to power. Correct?  
15 A. That's right. Can I elaborate just briefly?  
16 Q. Okay.  
17 A. It's been reported by a number of sources that in the first  
18 two years of military de facto -- de facto military rule, there  
19 were a few reported incidents of political rape but that this  
20 number expanded exponentially beginning in late 1993 and  
21 through 1994, which corresponds with the period when FRAPH was  
22 at its peak of power.  
23 Q. Do you have any understanding of what the motive was for  
24 the use of rape as a political weapon?  
25 A. Well, this is my understanding: In some cases, rapes were  
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68TGD0EH McGuire - direct  
1 performed as an act against a surrogate victim, in other words,  
2 FRAPH thugs going to seek an activist supporting or opposing  
3 the de facto military government. And if that person was not  
4 in the home -- and many people were in hiding and not in their  
5 homes -- some of these rapes were perpetrated against women and  
6 children who were at the home at the time, sending a message to  
7 the person who was being sought after. In other cases these  
8 rapes were deliberately done against women who were viewed as  
9 activists or protesters against the de facto military  
10 government.  
11 Q. Would you characterize these types of rapes as an act of  
12 violence as opposed just to an act of sexual gratification?  
13 A. Yes, absolutely. They were done with the intention of  
14 instilling fear, intimidation and shame upon the victim and, in  
15 the sense of asking you to look at Exhibit No. 6, please.  
16 Q. Let me ask you to look at Exhibit No. 6, please. Can you  
17 describe for the record what Exhibit No. 6 is?  
18 A. Yes. Exhibit No. 6 is a press release from May 19, 1994,

25 by armed civilian-dressed men.  
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68TGD0EH McGuire - direct  
1 Q. Is there any way that the defendant, Mr. Constant, could  
2 not have known about FRAPH's use of rape?  
3 A. There is absolutely no way they could not have known about  
4 it.  
5 Q. Why do you say that?  
6 A. I say that based upon what we have just demonstrated as his  
7 leadership and control of the organization, that he had to be  
8 aware of this. The entire society was aware of this. In my  
9 visits to Haiti at the time, I was made aware of this by people  
10 who knew what was going on. And news in Haiti travels fast.  
11 So even if he wished to ignore this news, he certainly would  
12 have had to know about it.  
13 Q. Given Mr. Constant's leadership role in FRAPH, is it your  
14 opinion that he could have stopped the rapes if he had wanted  
15 to?  
16 A. Yes. It is my opinion.  
17 Q. Finally, I'd like to turn to the lack of legal remedies for  
18 the plaintiffs here in Haiti. Can you describe for the Court  
19 the present state of the Haitian legal system.  
20 A. The Haitian judicial system is characterized by many  
21 observers, including me, as dysfunctional.  
22 Q. And can you explain what you mean by that, please?  
23 A. Yes. It is a system that has not been reformed in any  
24 sustained manner since the 1940s. The judges were  
25 appointed as political appointments by the dictatorships. It's  
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68TGD0EH McGuire - direct

1 a system that has not been able to have or sustain trials that  
2 are recognized as legitimate. It's a system where judges are  
3 bought off, justices are known to be corrupt, and it's a system  
4 that basically has little or no functioning infrastructure.  
5 Many of the courthouses that were built and refurbished in 1995  
6 and '96 under the first international intervention in Haiti  
7 have been destroyed most recently during the 2003 and 2004  
8 intervention in Haiti which, once again, forced the elected  
9 government from office.  
10 0. To the best of your knowledge, are there any members or  
11 former members of FRAPH that are in prison today for any crimes  
12 committed, say, between 1991 and '94?  
13 A. Today there are no former members of FRAPH in prison on  
14 account of crimes they committed during that period.  
15 0. Are any FRAPH members still active in Haiti today,  
16 politically active?  
17 A. Well, they're not active under the organization of FRAPH,  
18 which collapsed in late 1994, but these individuals are still  
19 there. They are still politically active in the sense that  
20 they would be wedded to the restoration of the status quo ante  
21 of the dictatorship and would have been active, therefore, in  
22 as perpetrating crime in a society that is still sadly lawless  
23 with corrupt police, a dysfunctional judiciary and a very weak  
24 prison system. And this leads to a very common phenomenon in  
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68TGD0EH McGuire - direct  
1 Haiti that is called in Creole a region etabli, which means in  
2 English "settling of scores" and certainly there are instances  
3 still in Haiti today where scores are settled, and those scores  
4 tend to be related to political activities.  
5 0. And when you say settling scores, do you mean through the  
6 use of violence?

13 THE COURT: All right. Thank you, sir. You're  
14 excused. You may step down.  
15 THE WITNESS: Thank you.  
16 (Witness excused)  
17 THE COURT: Let's take a ten-minute break, and then  
18 we'll put the -- plaintiffs, rather, will put the next witness  
19 on. As set forth on the record in the conference yesterday,  
20 I've granted plaintiffs' motion not to testify in chambers,  
21 but, rather, to the extent I'm allowing testimony to be behind  
22 the screen here for safety reasons. Now, I'll need the -- and  
23 I will have a direct view of the witness to judge the  
24 credibility. I'll need the witness behind the screen and the  
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68TGD0EH McGuire - direct  
1 Interpreter behind the screen. Whether the reporter wishes to  
2 be behind the screen and the attorney doing the questioning,  
3 from my standpoint, I don't need you behind the screen, but  
4 it's really whatever you think. I'll let you do your  
5 respective jobs most effectively.  
6 Let's take a ten-minute mid-morning break. You can  
7 refresh yourselves.  
8 (Recess)  
9 THE COURT: The reporter is behind the screen. Let's  
10 bring the witness in, please. The record will reflect that I  
11 have a view of the witness for credibility purposes.  
12 Each of the witnesses for the first time appeared behind the  
13 screen. I'm going to ask my clerk to  
14 administer the oath to the interpreter.  
15 THE LAW CLERK: Raise your right hand.  
16 (Interpreter sworn)  
17 THE LAW CLERK: Please state your name and spell your  
18

7 Absolutely yes, use of violence.  
8 0. Based on the state of Haiti's legal system, as you describe  
9 it, do you believe there's any legal remedy available in Haiti  
10 today for the plaintiffs to seek any legal redress for their  
11 crimes?  
12 A. No, I do not.  
13 MR. SAMSOM: Excuse me just a moment, your Honor.  
14 Thank you, your Honor. No further questions of this  
15 witness.  
16 THE COURT: Dr. McGuire, I take it that your opinion  
17 that Mr. Constant, through his command and control of the FRAPH  
18 organization, knew of the use of rape as an instrument of  
19 terror --  
20 THE WITNESS: Yes.  
21 THE COURT: -- and political intimidation --  
22 THE WITNESS: Yes, I do.  
23 THE COURT: -- is not based in any way on any  
24 knowledge you have as to his knowledge of the incidents at  
25 issue here against Does I, II and III. That was convoluted  
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55  
68TGD0EH McGuire - direct  
1 English. What I'm asking more directly is do you have any  
2 knowledge of the defendant's direct knowledge of the incidents  
3 against Does I, II and III?  
4 THE WITNESS: No, I do not.  
5 THE COURT: But your opinion is that, through his  
6 command and control of FRAPH, he was aware of  
7 as an instrument of intimidation the use of rape  
8 THE WITNESS: That's right. And also, I have read the  
9 depositions of the plaintiffs' and what happens to them is  
10 very consistent with what has been reported widespread as the  
11 modus operandi of FRAPH in perpetuating -- perpetrating, sorry,  
12 politically inspired rape.

19 last name for the record.  
20 T-h-o-m-a-s. The last name  
21 THE INTERPRETER: Harlie Thomas.  
22 THE COURT: All right. I'm now going to ask my clerk  
23 to administer the oath to the witness, who will be denominated  
24 as Jane Doe I, and then I will seal a portion of the  
25 transcript, because I will ask her her true name, and that  
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68TGD0EH McGuire - direct  
1 section will be sealed.  
2 Administer the oath to the witness as Jane Doe.  
3 THE LAW CLERK: Please raise your right hand.  
4 JANE DOE I,  
5 called as a witness by the Plaintiffs,  
6 having been duly sworn, testified through the Creole  
7 Interpreter as follows:  
8 THE COURT: All right. I'm now going to ask this next  
9 section be sealed in which I adduce the witness' name. That  
10 portion will be sealed.  
11 (Page 58 SEALED by order of the Court)  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

68TGD0EH McGuire - direct 59

1 THE COURT: All right. The rest of the record is  
2 unsealed.  
3 Ms. Feeney, your witness.  
4 MS. FEENEY: Thank you, your Honor.  
5 DIRECT EXAMINATION  
6 BY MS. FEENEY:  
7 Q. Ms. Doe, where were you born?  
8 A. I was born in Gonaves in Haiti. In the northern border of  
9 the country.  
10 Q. Do you have any brothers or sisters?  
11 A. Yes, I have.  
12 Q. How many?  
13 A. I have three sisters and two brothers.  
14 Q. At what age did you leave Gonaves?  
15 A. I was between 10 and 12 years old.  
16 Q. Where did you go?  
17 A. I went to live in Port-au-Prince.  
18 Q. Who did you live with in Port-au-Prince?  
19 A. I was living with a family there that was close to my own  
20 family.  
21 Q. Why did you move in with this other family in  
22 Port-au-Prince? family didn't have the means to take care of me.  
23 A. Because my age did you live with this family in  
24 Port-au-Prince?  
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68TGD0EH Jane Doe I - direct 60

7 Q. And were they boys or girls?  
8 A. Two boys.  
9 Q. Where do your children live now?  
10 A. They live in Haiti, Port-au-Prince.  
11 Q. When did you come to the U.S.?  
12 A. July 3rd, 2003.  
13 Q. Why did you come to the U.S.?  
14 A. Because the country of Haiti -- in Haiti my life was  
15 threatened. I saw death in front of me.  
16 Q. Are your children going to be able to join you in the U.S.?  
17 A. Yes. In the name of Jesus.  
18 Q. Do you work currently?  
19 A. Yes.  
20 Q. And what do you do?  
21 A. I work for a seafood company.  
22 Q. I want to talk with you now about 1990.  
23 A. Yeah.  
24 Q. Were you still living in Port-au-Prince at that time?  
25 A. Yes.  
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68TGD0EH Jane Doe I - direct 62

1 Q. Who did you live with?  
2 A. With my husband.  
3 Q. Did you have children at that time?  
4 A. Yes.  
5 Q. How many?  
6 A. Three.  
7 Q. Were you and your husband involved in any political groups  
8 at that time?  
9 A. My husband was involved in a political group.  
10 Q. What was the name of that group?  
11 A. The name was FNCD.  
12 Q. What types of activities was that group involved in, if you

1 I stayed there until I was 18, and then I moved out.  
2 Q. Where did you move?  
3 A. At that time I had a boyfriend. So I went to live with my  
4 husband.  
5 Q. Who was your husband?  
6 A. It was a husband who was the dearest person to me. It was  
7 the dearest person to me after God in heaven.  
8 Q. Did you live as husband and wife together?  
9 A. Yes.  
10 Q. In what neighborhood did you live?  
11 A. I lived at Fort Avenue Bolis.  
12 Q. Is that in Port-au-Prince?  
13 A. Yes, within Port-au-Prince.  
14 Q. What did your husband do for a living?  
15 A. He was a taxi driver.  
16 Q. And what about you? Did you work?  
17 A. Yes.  
18 Q. What did you do?  
19 A. I didn't work with people. I worked for myself as a small  
20 businesswoman.  
21 Q. What type of business did you have?  
22 A. Well, I used to travel to Miragoane, and I used to sell  
23 tennis shoes and men's shoes.  
24 Q. Did you and your husband have children together?  
25 A. Yes.  
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68TGD0EH Jane Doe I - direct 61

1 Q. How many?  
2 A. I had two boys and one girl.  
3 Q. And since that time, have you had any other children?  
4 A. Yes.  
5 Q. How many?  
6 A. Two.  
13 know?  
14 A. Yes.  
15 Q. Please describe the activities.  
16 A. Okay. They were defending, fighting for democracy for  
17 churches in Haiti.  
18 Q. What was your husband's role in that group?  
19 A. Okay. Himself, his job was to go through all the streets  
20 and put posters throughout.  
21 Q. Let's move to 1991. How did the coup d'Etat of September  
22 30th, 1991 affect your family's life?  
23 A. Okay. My family's life was terribly threatened, because I  
24 saw death in front of me.  
25 Q. Was your husband in particular affected by the coup of '91?  
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68TGD0EH Jane Doe I - direct 63

1 A. Yes.  
2 Q. In what way?  
3 A. My husband started to become a victim September 30, '91,  
4 and he disappeared January 27th, '92.  
5 Q. Let's talk about January 27th, 1992.  
6 A. Okay. January 27, '92, my husband went out to work to  
7 drive his taxi.  
8 Q. And did your husband come back from work?  
9 A. There was a huge massacre that took place in Carrefour.  
10 Fourteen people died. He was the 15th person, but me, I didn't  
11 see what happened.  
12 Q. Was your husband ever found?  
13 A. No, your husband ever found?  
14 Q. How did his disappearance affect you?  
15 A. Okay. This affected me terribly, because I saw death in  
16 front of me. I was yelling and crying out loud for justice. I  
17 said to myself I would have to find justice.  
18 Q. Were you able to do anything about the fact that he had

19 disappeared?  
20 A. The reason I could not do anything, because there was no  
21 place for anybody to go file complaints, but I was always  
22 speaking out loud to try to find my husband, because I couldn't  
23 remain silent.  
24 A. What happened to you after you began speaking out?  
25 A. They came to get me at home. They said that they would  
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Jane Doe I - direct  
68TGD0EH  
1 have me stop talking about my husband who died.  
2 Q. When you say "they," who do you mean?  
3 A. A series of men wore masks, but I was unable to identify  
4 them.  
5 Q. How many approximately came to your house?  
6 A. About five or six. Because I was afraid, I could not.  
7 Q. What did they do once they arrived at your house?  
8 A. They told me that they would make me stop talk about my  
9 husband who died, and they started to mistreat me.  
10 Q. Did they take you away from your house?  
11 A. Okay. Before they took me away, they beat me quite a beat.  
12 They hit me with the heel of their shoes. They hit me also  
13 with the butts of the guns.  
14 MS. FENNEY: Your Honor, can we take about a 30-second  
15 break?  
16 THE COURT: Yes, of course. Take a few moments.  
17 (Pause)  
18 MS. FENNEY: Thank you, your Honor.  
19 THE COURT: All right. Take some time to compose  
20 yourself, Ms. Doe.  
21 MS. FENNEY: Thank you, your Honor.  
22 THE WITNESS: Thank you.  
23  
24 Q. Ms. Doe, where did these men take you, if you know?

66

A. I was in the street. In the street, it's somebody that I  
met who took me home.  
Q. Were you reunited then with your children?  
A. Yes.  
Q. After your release, how was your situation changed in any  
way?  
A. My life was not okay at all, because I was still asking for  
justice for my husband.  
Q. Why did you continue asking for justice for your husband?  
A. I said to myself, even if I were to die, even if I were to  
disappear like my husband, I would have to find justice for  
him, because he was the dearest person in my life.  
Q. Let's now move to April 29th, 1994.  
A. Yes.  
Q. What happened that day?  
A. That day they return to my house. I don't know who that  
was.  
Q. How many individuals came to your house that day?  
A. There were five people who came into my house.  
Q. What time of day was this?  
A. It was around two o'clock in the middle of the night.  
Q. Were these individuals all men? Could you tell?  
A. Well, they were all masked, so I couldn't identify them.  
Q. And how many of them were there?  
A. Five of them came into my house.  
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Jane Doe I - direct  
68TGD0EH  
0. How did they get inside of your house?  
1 A. Okay. They were knocking on the door. Since I didn't  
2 expect anybody, I did not open the door. And they opened the  
3 door on their own.  
4 Q. You said they were wearing masks. Were they carrying guns?  
5 A. Yes.  
6

25 A. Yes.  
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Jane Doe I - direct  
68TGD0EH  
1 Q. Where was that?  
2 A. They took me to the penitentiary.  
3 Q. And how long were you at the penitentiary?  
4 A. I spent five days at the penitentiary.  
5 Q. And what happened to you during those five days?  
6 A. They stripped me of my clothes in order to beat me every  
7 day.  
8 Q. Were you finally released?  
9 A. They released me in the middle of the night all naked.  
10 THE WITNESS: When was it?  
11 THE COURT: It was during the night. I don't know  
12 if it was 2:00 or one o'clock.  
13 THE COURT: No. No. I mean what month and what year.  
14 THE WITNESS: It was still in 1992. I don't remember  
15 what month.  
16 THE COURT: All right.  
17 BY MS. FENNEY:  
18 Q. Ms. Doe, about how many weeks after your husband's  
19 disappearance was this?  
20 A. It happened after two weeks when they took me away.  
21 Q. You said you were released in the middle of the night.  
22 Where were you released?  
23 A. They released me like somebody was a crazy person, and I  
24 didn't know that you do?  
25 Q. Where did you go?  
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68TGD0EH

Jane Doe I - direct

7 Q. Once inside your house, did they say anything to you?  
8 A. Yes.  
9 Q. What did they say?  
10 A. They said that if I continue to fight for justice, they  
11 will have me shut up and they will make me stop that day.  
12 Q. Were your children at the house with you at this time?  
13 A. Yes.  
14 Q. Was all three of your children?  
15 A. Yes.  
16 Q. Did these men do anything to your children at that time?  
17 A. Yes.  
18 Q. What did they do?  
19 A. My oldest child was screaming.  
20 THE COURT: How old was your oldest child?  
21 THE WITNESS: Between '86 and '94, I believe he was 8.  
22 Is that right?  
23 Q. Why was your oldest son crying out?  
24 A. Because when he saw all the people assaulting me and  
25 holding me.  
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Jane Doe I - direct  
68TGD0EH  
0. Did these men touch your son?  
1 A. Yes.  
2 MS. FENNEY: Your Honor, can we take another break?  
3  
4 THE COURT: Take your time.  
5 THE WITNESS: Please tell the judge to excuse me,  
6 because it's not very easy for me.  
7 THE COURT: No. Of course. I understand. Take your  
8 time.  
9 THE WITNESS: Okay.  
10 BY MS. FENNEY:  
11 Q. Ms. Doe, we were talking about your oldest son. Can you  
12

13 tell the Court, please, what these men did to your oldest son.  
14 A. Yes.  
15 Q. Please explain.  
16 A. One of the men had put his foot on his neck. He was  
17 yelling so much. And they were beating him up all over his  
18 head, and he started to bleed both from his mouth and from his  
19 nose.  
20 Q. Could you see what these men were doing to your son?  
21 A. Yes.  
22 Q. At this point what did you think was going to happen to  
23 your son?  
24 A. I thought — when I saw him bleeding and blood all over the  
25 floor, I thought they had practically killed him.  
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68TGD0EH Jane Doe I — direct  
1 Q. Okay. Now let's talk about what happened to you. Did  
2 these men do anything to you?  
3 A. Oh, yes, yes.  
4 Q. If you can, please tell the Court what they did.  
5 A. That night all those five men raped me that night in front  
6 of my children, in front of my children.  
7 Q. What were your children doing at this time?  
8 A. The kids were all crying. The smallest ones were crying,  
9 because they thought (name stricken by order of the Court)  
10 died, my oldest child, my oldest child.  
11 THE COURT: How old was your youngest child at that  
12 time?  
13 THE WITNESS: The youngest child was 3 years old. No.  
14 Sorry. When the father died, the youngest was 2, and by '94,  
15 the child was 4.  
16 Q. Besides the rape that you suffered, did these men hurt you  
17 in any other way?  
18 A. Yes.

25 Q. Why do you think these men attacked you that night?  
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68TGD0EH Jane Doe I — direct  
1 A. Because I was asking for justice for my husband who had  
2 died, because really I could not remain silent.  
3 Q. Let's now move to June 6, 1994.  
4 A. Yes.  
5 Q. What happened that day?  
6 A. That day, it was raining, and I could not remain in the  
7 bushes to sleep. So I went back to the house in your house?  
8 Q. What happened that night while you were in your house?  
9 A. Okay. That day the only thing that kept me alive was God,  
10 because I saw death in front of me.  
11 Q. Did someone come to your house again that night?  
12 A. Yes.  
13 Q. How many people?  
14 A. I heard many people talking, but it's five people who came  
15 in my house.  
16 Q. And this time, how did they get inside of your house?  
17 A. They were knocking on the door, and me, I was afraid,  
18 because I didn't know that I had any more dealings with  
19 anybody.  
20 Q. Did you open the door?  
21 A. No. They broke the door open, and they threw the door on  
22 the other side of the room. And they invaded the house.  
23 Q. Were these men wearing masks again?  
24 A. I was never able to get into heavy statements, because they were  
25 always masked and wearing heavy statements.  
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68TGD0EH Jane Doe I — direct

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19 Q. What did they do to you?  
20 A. They stuck me by my neck.  
21 Q. Please point to where on your neck —  
22 THE COURT: She just did.  
23 MS. FEENEY: Okay. Your Honor, can the record reflect  
24 that she pointed to the left side of her neck.  
25 THE COURT: Go ahead.  
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68TGD0EH Jane Doe I — direct  
1 Q. Was your neck — the left side of your neck the only place  
2 that you were stabbed?  
3 A. They inflicted a wound also by my ear.  
4 MS. FEENEY: Your Honor, may the record also reflect  
5 that she pointed to her left ear.  
6 THE WITNESS: Thank you.  
7 Q. After this attack, did these men leave your house?  
8 A. Yes. They thought they had left us for dead.  
9 Q. Before leaving, did they say anything else to you?  
10 A. They said that right now I would stop talking and shut up.  
11 Q. And after this attack, did you remain in your same house?  
12 A. I remain in the same house. However, I would sometimes  
13 leave the house, go back and forth and go sleep in the bushes.  
14 Q. Were your children with you at this time?  
15 A. Yes.  
16 Q. Why would you have to go and sleep elsewhere besides your  
17 house?  
18 A. Because I saw that I was facing death, and I didn't want to  
19 remain in the same house with my children, because I wanted to  
20 continue to fight for justice.  
21 Q. This attack that you and your family suffered, how did it  
22 affect you?  
23 A. Me, I saw death in front of me, because I was like a crazy  
24 person roaming all over with my children.

1 Q. When they came into your house, did they say anything to  
2 you?  
3 A. Yes.  
4 Q. What did they say?  
5 A. They said that despite everything I have been through up to  
6 now and I'm still there asking for justice, that day they were  
7 going to end up my life.  
8 Q. And where were your children at this time?  
9 A. My kids was still together with me.  
10 Q. All three of them?  
11 A. Yes.  
12 Q. What did you do when these men came inside of your house?  
13 A. Okay. I was afraid, and as an excuse, I thought I might  
14 need to go to the bathroom, so I ran to the bathroom.  
15 Q. Did they allow you to go to the bathroom?  
16 A. They themselves led me to the bathroom.  
17 Q. What did they do after they led you to the bathroom?  
18 A. At that time I had diarrhea, so I left the bathroom. I had  
19 a big bucket of water, and they pour it onto me from head to  
20 toe.  
21 Q. Were you wearing clothes at this time?  
22 A. Yes. They told me to get undressed, and then they threw  
23 the water all over me.  
24 Q. And, again, were your children able to see this?  
25 A. Yes. In front of them, they were crying. They could not  
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68TGD0EH Jane Doe I — direct  
1 help me out.  
2 Q. After they poured this bucket of water on you, what did  
3 these men then do to you?  
4 A. They led me down, and all five of them that day — I  
5 couldn't stand those men, those five men. My kids were looking  
at everything they were doing to me.

7 MS. FEENEY: Your Honor, can we take another break?  
8 THE WITNESS: Oh, Jesus.  
9 THE COURT: Take your time. Just relax. There's no  
10 rush. Take your time.  
11 THE WITNESS: Okay.  
12 MS. FEENEY: Would you like to continue?  
13 THE COURT: Proceed.  
14 THE WITNESS: Please thank the judge.  
15 BY MS. FEENEY:  
16 Q. To be clear, at this time did these men force you to have  
17 sex with them?  
18 A. They didn't force me to have sex with them. They just laid  
19 themselves on me, and they took my clothes off.  
20 Q. And did they rape you?  
21 A. Yes.  
22 Q. Each one of the five men?  
23 A. Yes.  
24 Q. And, again, were your children in the room?  
25 A. They were with their own eyes, the kids, looking at  
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68TGD0EH Jane Doe I - direct  
1 everything that was being done to me,  
2 Q. And after the sexual assault, did these men do anything  
3 else to you at that time?  
4 A. Yes.  
5 Q. What did they do?  
6 A. Well, I was lying on the floor and they thought I was dead,  
7 they slashed my left breast open. My left breast is the vein  
8 of my death.  
9 Q. Did this cause you to bleed?  
10 A. I was bleeding profusely, because it was like a breast that  
11 was really sick.  
12 Q. Did these men say anything else to you at this point?

19 Boutlier?  
20 A. Well, because I was with the kids, the kids were like a kin  
21 I was using. They gave me the strength in order to make it  
22 there.  
23 Q. What was your physical condition at this time while you  
24 tried to walk?  
25 A. My body was good for nothing, because I saw death in front  
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68TGD0EH Jane Doe I - direct  
1 of me. I felt threatened by death.  
2 Q. Were you bleeding at this time?  
3 A. Yes.  
4 Q. And where were you bleeding from?  
5 A. Okay. I was bleeding both from the breast and also the  
6 side of the neck. The blood was dripping.  
7 Q. Do you know how long it took you to get to Boutlier?  
8 A. I spent at least three days to get there, and even then I  
9 was not there yet.  
10 Q. Please describe your emotional state as you made this  
11 three-day walk.  
12 A. I had no food to eat, nothing to drink. For me, it was  
13 like death was waiting for me. It was be thanks to God and to  
14 heaven and the children that I was able to remain alive. My  
15 heart was of no use to me.  
16 Q. What did you and your children do for food?  
17 A. We were very difficult for us to find food to eat.  
18 Q. Were you able to find some help?  
19 A. I had you have the kids on the street begging so they could  
20 find some money to be able to take care of themselves.  
21 Q. When you finally reached Boutlier, were you able to get  
22 some help?  
23 A. No. No. The kids were begging, asking here and there for  
24 10 cents, 50 cents.

13 A. At that point they said that my life was done with. They  
14 were finished with me.  
15 Q. And at some point did they finally leave your house?  
16 A. Well, I didn't know what was happening, because while I was  
17 lying on the floor, I had lost all consciousness.  
18 Q. Please describe how you felt when you came back into  
19 consciousness.  
20 A. Okay. When I regained consciousness, because I felt that  
21 death was in front of me, it took me a long time to get back to  
22 myself.  
23 Q. How long did it take you to realize where you were and what  
24 had happened?  
25 A. Okay. That thing happened at night, and the whole next  
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68TGD0EH Jane Doe I - direct  
1 day, the next day I was in the house and I didn't know where I  
2 was.  
3 Q. Do you remember thinking about your children at this time?  
4 A. Well, I could not even think about my kids, because I  
5 cannot even think about myself. I didn't know who I was.  
6 Q. And at some point, were you able to wake up and get up?  
7 A. Well, I spent a lot of misery before getting up and finding  
8 a place where to go.  
9 Q. Where did you go?  
10 A. I went to a mountain called Boutlier. I went to find  
11 refuge there with my kids.  
12 Q. How far were your kids, were living was Boutlier?  
13 A. I was quite a distance where I live. I took me quite a  
14 while on the road to get there.  
15 Q. And how did you get there?  
16 A. Well, the way I got there is like walking short distances,  
17 stopping in order to get there and find refuge in the bushes.  
18 Q. Did you lose consciousness while you were walking up to

25 Q. Did you find anyone who could help you with your wounds?  
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68TGD0EH Jane Doe I - direct  
1 A. Much later.  
2 Q. When you say "much later," do you mean days or weeks?  
3 A. Three months, three months later.  
4 Q. Did you ever see a doctor?  
5 A. Yes, after that.  
6 Q. What did you learn from the doctor?  
7 A. Now, when I got to the doctor, the doctor finished  
8 consulting me, examining me. He said that he saw that I was  
9 pregnant with a child.  
10 Q. How did you react to the news that you were pregnant?  
11 A. When I heard the news, I felt like killing myself.  
12 Q. And how did your pregnancy proceed?  
13 A. The rest of my pregnancy was very sour for me. I didn't  
14 have a place to stay, and I was living in the bushes.  
15 Q. How was your health during the pregnancy?  
16 A. My health was not good, because I had no place to sleep. I  
17 had no food to eat with my children, even though I got some  
18 medications.  
19 Q. Did you finally give birth?  
20 A. Yes.  
21 Q. And was it a boy or a girl?  
22 A. A boy.  
23 Q. When was he born?  
24 A. He was born February 12, 1995.  
25 Q. Is this son a part of your family?  
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68TGD0EH Jane Doe I - direct



25 THE COURT: Just alert me to that. How long do you  
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Jane Doe I - direct 83  
1 think the testimony will be?  
2 MS. FENEY: I think even less time.  
3 THE COURT: That was pretty rough. It was tough on  
4 everybody.  
5 MR. SAMSON: Doe II might be a bit emotional.  
6 THE COURT: All right. Let's proceed.  
7 (In open court)  
8 THE COURT: Call your next witness, please.  
9 MS. FENEY: We call Jane Doe II.  
10 THE COURT: Please remain standing.  
11 THE LAW CLERK: Raise your right hand.  
12 THE COURT: No. The witness.  
13 THE LAW CLERK: Raise your right hand.  
14 JANE DOE II,  
15 called as a witness by the Plaintiffs,  
16 having been duly sworn, testified through the Creole  
17 Interpreter as follows:  
18 THE COURT: All right. You will be known during your  
19 testimony by the pseudo name of Jane Doe II, but I am now going  
20 to for the record have you state your full name, and it will be  
21 sealed. Just a moment, please.  
22 (Page 84 SEALED by order of the Court)  
23  
24  
25

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68TGD0EH Jane Doe I - direct 85

7 A. I have four.  
8 Q. How old are your children?  
9 A. One is going to be 21. The other one is 18. The one  
10 before that is 15. And the one before that one is 10.  
11 Q. And do you have boys or girls?  
12 A. Two boys, two girls.  
13 Q. How long have you been living in the U.S.?  
14 A. For two years.  
15 Q. And do you work?  
16 A. Yes.  
17 Q. Let's talk about 1991.  
18 A. Yes.  
19 Q. Where did you and your husband live at this time?  
20 A. In the Maritissant area.  
21 Q. And at that time what did your husband do for a job?  
22 A. My husband was in the military.  
23 Q. What was his position in the military?  
24 A. He was a soldier.  
25 Q. And in 1991, did you and your husband already have  
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Jane Doe II - direct

68TGD0EH Jane Doe II - direct 87  
1 children?  
2 A. Yes.  
3 A. How many?  
4 A. Three.  
5 Q. Were you working at this time?  
6 A. Yes. I was working. I had my own business.  
7 Q. What type of business did you have?  
8 A. I had a big store at home.  
9 Q. What types of things did you sell at your store?  
10 A. I sold all kinds of things that people -- all kinds of  
11 food, and also I sold things like dresses and underwear and  
12 that kind of stuff.

1 THE COURT: Proceed.  
2 DIRECT EXAMINATION  
3 BY MS. FENEY:  
4 Q. Ms. Doe, where were you born?  
5 A. I was born in Haiti.  
6 Q. Do you have brothers or sisters?  
7 A. Yes.  
8 Q. How many brothers or sisters?  
9 A. I have three brothers, but on my father's side, I have  
10 sisters. But I don't know exactly how many.  
11 Q. Where in Haiti did you grow up?  
12 THE INTERPRETER: This is the interpreter, your Honor.  
13 I would like to ask the witness to repeat the name of the place  
14 where she was born.  
15 THE COURT: Please.  
16 A. In Maritissant.  
17 Q. Is that in the city of Port-au-Prince?  
18 A. Yes.  
19 Q. Did you attend school growing up?  
20 A. Yes.  
21 Q. Did you have the chance to attend some professional  
22 schools?  
23 A. Yes.  
24 Q. What type of professional schools?  
25 A. I went to learn to sew, to cooking school and to learn how  
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Jane Doe II - direct 86  
1 68TGD0EH Jane Doe II - direct 86  
2 to bake  
3 Q. Where you married?  
4 A. Yes.  
5 Q. Did you have any children?  
6 A. Yes. I have children.  
7 Q. How many children?

13 Q. And in addition to your work, what other types of  
14 activities were you involved in at that time?  
15 A. I was a delegate in an organization.  
16 Q. What type of organization?  
17 A. It was an organization to defend human rights.  
18 Q. What was the name of that group?  
19 A. MJD.  
20 Q. What does MJD stand for?  
21 A. The Youth Movement for Concrete Democracy.  
22 Q. Was your husband also a member of that group?  
23 A. Yes.  
24 Q. What was your role -- what did your role as delegate  
25 entail?  
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68TGD0EH Jane Doe II - direct 88  
1 THE INTERPRETER: Counsel, this is the interpreter.  
2 Or, your Honor, can I please ask the witness to repeat so I can  
3 properly translate? THE COURT: Yes. Of course.  
4 A. I was there to carry mail. If something was happening, to  
5 distribute the mail, to bring it to all the places. If there  
6 was somebody who was a member of the organization was sick, I  
7 was supposed to try to find out what was wrong with that  
8 person. Okay. And if there were people who were not members  
9 of the organization who would like to join the organization, I  
10 was there to attract them to join the organization.  
11 Q. Who did you attract them to join the organization?  
12 A. When I was a member of the organization, we were really in  
13 for the middle of a fight. We were fighting for democracy, also  
14 for the respect of people's rights.  
15 Q. Let's now talk about the coup d'Etat of September 30th,  
16 1991. How did this coup affect you and your family?  
17 A. It had affected my life a whole lot and that of my family

19 too.  
20 Q. In what way did it affect you and your husband?  
21 A. When the people got into my house, it was October 16. It  
22 was after September 30.  
23 Q. Before we get to October 16, how was your husband's job in  
24 the military affected by the coup of September 30, 1991?  
25 A. My husband was at home that day. He was off. He had not  
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68TGD0EH Jane Doe II - direct  
1 gone to work. The coup d'Etat took place in the night. That  
2 day I told him not to go to work, because I knew they were  
3 after -- looking for people who were member of the  
4 organization.  
5 Q. To be clear, was your husband a supporter of the military  
6 coup?  
7 A. No.  
8 Q. Did the members of the military have reason to know that  
9 your husband was not supportive of the military coup?  
10 A. Yes.  
11 Q. How so?  
12 A. Because inside the military, my husband, he always used to  
13 always talk of democracy, and the others did not agree with  
14 what he was talking about.  
15 Q. How did you and your family spend the weeks immediately  
16 following the coup?  
17 A. We had to live hiding inside the house. We could not go in  
18 the streets.  
19 Q. Why did you feel like you had to stay inside of the house?  
20 A. Because if we went out, it wouldn't be a good thing for us.  
21 We could have been killed.  
22 Q. During this period, did you and your husband ever have any  
23 problems with the military?  
24 A. You mean when, during the coup?

1 A. No, because I was blindfolded. I don't know where they had  
2 taken me.  
3 Q. Did you learn at some later point where it was that you  
4 were taken?  
5 A. Well, it's my family that informed me of where I'd been  
6 taken.  
7 Q. And where was that?  
8 A. It was to the national penitentiary.  
9 Q. How long were you held at the national penitentiary?  
10 A. My family, my mother let me know that it was six months.  
11 Q. Why did you have to learn that it was six months from your  
12 parents?  
13 A. Because I had a baby that I was breastfeeding.  
14 MS. FEENEY: Your Honor, may we just take a short  
15 break?  
16 THE COURT: Yes.  
17 (Pause)  
18 THE WITNESS: May God give me the strength. I feel  
19 that my head starting....  
20 THE COURT: Take your time and relax, and continue  
21 when you feel you're able to.  
22 THE WITNESS: I feel that my heart is beating. Since  
23 the coup, I've had this condition, my heart beating. Since  
24 the coup, THE COURT: Do you feel you're able to proceed,  
25 Ms. Doe?  
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68TGD0EH Jane Doe II - direct  
1 THE WITNESS: I'll try my best.  
2 THE COURT: All right. Thank you.  
3 THE WITNESS: I've been fighting to get to this.  
4 THE COURT: I understand.  
5 MS. FEENEY: Thank you, your Honor.  
6 THE WITNESS: Thank you, your Honor.

25 Q. Let's talk specifically about October 16th, the date that  
you mentioned.  
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68TGD0EH Jane Doe II - direct  
1 you mentioned.  
2 A. During the night of October 16th, we were at home sleeping.  
3 We heard a lot of noise, a lot of shooting outside. We heard a  
4 door was -- somebody broke a -- they broke our door open.  
5 Q. Did anyone enter into your house?  
6 A. Yes.  
7 Q. How many?  
8 A. I couldn't tell. More than five. Okay. Well, there were  
9 some outside. There were some inside. The way they attacked  
10 us, I was not able to lift my head to find out how many were  
11 inside.  
12 Q. Once they came into the house, what did they do to you and  
13 your family?  
14 A. When they got into my house, when they got in my house --  
15 when they forced my husband to lie down, when they forced him  
16 to lie down, they put their boots, their big boots on his head,  
17 and they beat him up. They forced me also to lie down. I was  
18 trying to avoid them raping me, but four of them raped me. And  
19 they took all of my children. They tossed the child to the  
20 side and was crying mommy, mommy, mommy.  
21 Q. And at this time were your other children also present?  
22 A. All my kids were in the house with me. But after they took  
23 me, they took me away, along with my husband, and they  
24 blindfolded us.  
25 Q. Do you know where they took you?  
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68TGD0EH Jane Doe II - direct

7 BY MS. FEENEY:  
8 Q. Please explain to the Court why you were not able to know  
9 how long it was that you were held at the national  
10 penitentiary.  
11 A. Because I was breastfeeding, and I was so traumatized,  
12 which caused the milk to go up into my system. And that's why  
13 I didn't know how long I spent at the penitentiary. And later  
14 on the reason I was able to continue living was my parents to  
15 pay out some money.  
16 Q. To be clear, once you were taken to the penitentiary, were  
17 you allowed any contact with the baby that you had, up until  
18 then, been breastfeeding?  
19 A. No.  
20 Q. Let's talk about the period after you were released from  
21 the penitentiary. Where did you go to live after you were  
22 released?  
23 A. They had released me onto the street. So they had told my  
24 family to go at a certain corner in the street where I could be  
25 found. So my family took me outside of the city, where I came  
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68TGD0EH Jane Doe II - direct  
1 from, where they gave me some remedies in order to preserve  
2 also my life.  
3 Q. And did you stay with your family?  
4 A. Yes.  
5 Q. At some point did you have to leave the home of your  
6 family?  
7 A. Yes. I was obliged to leave, and I went back to  
8 Port-au-Prince.  
9 Q. Why did you leave your family?  
10 A. Because while I was away from the city, I had nobody to  
11 help me. I had to come back to Port-au-Prince in order to find  
12 an organization to help me.

13 Q. Were your children with you at this time?  
14 A. No.  
15 Q. Where in Port-au-Prince did you go to live?  
16 A. I went to live in the mountain of Boutillier.  
17 Q. And why did you choose the mountains of Boutillier to live?  
18 A. Because that was a place that was remote from  
19 Port-au-Prince.  
20 Q. Did you ever have to leave Boutillier and come down into the  
21 city?  
22 A. Yes. Sometimes, you know, I had to leave. For example,  
23 when it did not rain -- up there we didn't have any water to  
24 use. We had to go down the mountain. I had to mask myself in  
25 order to go look for water and also to try to find something to  
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Jane Doe II - direct 94

1 68TGD0EH  
2 Q. Let's now talk about July 1994. In July 1994, where were  
3 you living at that time?  
4 A. I was still living in the mountains.  
5 Q. Were your husband or your children with you in the  
6 mountains?  
7 A. No.  
8 Q. And why not?  
9 A. Because if we all lived together and if they came one day,  
10 perhaps they will take all of us, do you mean?  
11 A. I would not say exactly an organization called RAPH. That was  
12 formed on order to defend on the life of all the people who were  
13 militating or the militants.  
14 Q. In July were you forced to come down from the mountains  
15 into the city at any point?  
16 A. Yes.  
17 Q. And why was it that you came down from the mountains?  
18

25 A. Okay. That night I heard a lot of shootings, and outside I  
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Jane Doe II - direct 96

1 68TGD0EH  
2 heard my name called. So at that moment, they broke the door  
3 open and got into that house also.  
4 Q. How many broke the door open and entered the house?  
5 A. Still the same thing. I cannot know.  
6 Q. Would you say at least three people?  
7 A. Well, three people, I know there were three who raped me.  
8 Q. When they came into the house, were they carrying guns?  
9 A. Yes.  
10 Q. Were they wearing masks on their face?  
11 A. Yes. They were masked.  
12 Q. Were they shooting their guns at this time?  
13 A. Yes. They were shooting to the point where one of the  
14 bullets hit my leg.  
15 MS. FEENEY: Your Honor, may the record reflect that  
16 the witness pointed to her left leg.  
17 THE COURT: All right.  
18 A. It was there, and the scar is there (indicating).  
19 MS. FEENEY: Your Honor --  
20 THE COURT: Proceed.  
21 MS. FEENEY: Thank you.  
22 Q. Where was your brother at the time that these men came into  
23 your house?  
24 THE INTERPRETER: Again, your Honor, the interpreter  
25 would like the witness to break down her answer so --  
THE COURT: Yes. You can ask her at any time.  
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68TGD0EH Jane Doe II - direct 97

19 A. Okay. First of all, I used to come down the mountains to  
20 go to an organization with human rights in order to find help.  
21 The second reason I used to come down was to go visit with my  
22 children.  
23 Q. And when you came down, where did you go?  
24 A. One day I came down to see the kids, and I stayed in a  
25 place called Gaille futfoy (phonetic). That was my brother's  
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Jane Doe II - direct 95

1 68TGD0EH  
2 house, and I stayed with my sister-in-law.  
3 Q. Who lived with your brother and your sister-in-law in that  
4 house?  
5 THE INTERPRETER: Again, your Honor, I would like to  
6 ask for permission for the witness to break down what she just  
7 said so I can properly repeat what she said.  
8 THE COURT: Yes.  
9 A. I go to sleep at my brother's, because I couldn't start  
10 circulating in the capital early in the morning. This is why I  
11 went to sleep there. And in the night --  
12 Q. Before we get to the night, Ms. Doe, to be clear, at the  
13 house, it was the house that belonged to your brother, and he  
14 lived there with his wife and his child?  
15 A. Yes.  
16 Q. When you went to his house to stay, on your way to his  
17 house did you notice anything unusual?  
18 A. Yes.  
19 Q. What was that?  
20 A. I suspected that there were two young men who were  
21 following me. I had to rush to get into the yard, because I  
22 suspected that perhaps they were sent after me.  
23 Q. Now, during that night did you hear anything unusual?  
24 A. Yes.  
25 Q. What did you hear?

1 A. My brother was inside the house sleeping. I had told my  
2 sister-in-law to -- that perhaps we should leave the mattress  
3 to put him under or behind the bed so that when those people  
4 came in, they shouldn't be about to see him.  
5 Q. Why did you feel you needed to protect or hide your  
6 brother?  
7 A. Because I knew if they came in, they probably would take  
8 him away. They wouldn't leave him in the house.  
9 Q. When the men came into the house, what did they say to you?  
10 A. When they came in, they said, Are you such and such? You  
11 know that tonight it's the end of your life? But inside in my  
12 heart I was praying a lot.  
13 Q. You said that these three men raped you. Did they do  
14 anything else to you?  
15 A. Okay. Before they raped me, they knocked me down to the  
16 floor, because I was fighting. I would not let them do that to  
17 me. Because of the fact they knocked me down to the floor, my  
18 head was broken here. Not only did they rape me, but they also  
19 raped my sister-in-law, and she got beaten a whole lot in the  
20 chest. That caused her to die from stomach cancer.  
21 Q. Ms. Doe, after they hit your head, did you begin to bleed  
22 from your head?  
23 A. Yes. My God.  
24 Q. You've mentioned that they beat your sister-in-law in the  
25 stomach. Did they do anything similar to you?  
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Jane Doe II - direct 98

1 68TGD0EH  
2 A. They beat me up a lot also.  
3 Q. Please describe your feelings during this attack that you  
4 and your sister -- that your sister-in-law went through?  
5 A. It's as though I saw that I was dead. That day I said for  
6 good my life was over.  
7 Q. Did the men leave you in the house?

7 A. No.  
8 Q. Where did they take you?  
9 A. They took me. They blindfolded me, and they took me away.  
10 And when I arrived somewhere --  
11 THE INTERPRETER: Your Honor, again, this is the  
12 interpreter. I'm not sure it's clear what the witness is  
13 saying. I'm going to ask for permission to repeat what she  
14 said.  
15 THE COURT: Yes.  
16 THE INTERPRETER: Or rephrase it.  
17 A. After they took me away blindfolded, when I arrived to the  
18 place where they were taking -- they took me, they pointed  
19 their gun at me. They told me, Don't you know where you are  
20 tonight? I answered I didn't know where I was, because I was  
21 blindfolded. They told me, Have you ever heard of a place  
22 called Titwla (phonetic)? Tonight this is where I'm going to  
23 leave you. You will not return home.  
24 Q. And Ms. Doe, had you in fact heard of Titwla before?  
25 A. Yes.

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68TGD0EH Jane Doe II - direct  
1 Q. And what had you heard about Titwla?  
2 A. Titwla is a place far away from Port-au-Prince where at  
3 that time when they kill people, that's where they went and  
4 dropped their bodies. Or they would take you there directly  
5 and kill you there.  
6 Q. All right, were you still blindfolded, did you know that it  
7 was still tonight?  
8 A. For me, it was still night.  
9 Q. Did the men at any point leave you alone at Titwla?  
10 A. Yes. Because after they had tried everything they could in  
11 order to gun me down, I was praying very deeply. One said,  
12 okay, we are going to leave you alone. We won't kill you, but

19 THE INTERPRETER: -- to repeat again.  
20 A. I tried whichever way I can to go out in order to get into  
21 a car. Even though I didn't have a penny with me, I stopped a  
22 car. We got onto the car, and I went to the same place where  
23 my husband was with my children. I didn't go right away to  
24 Port-au-Prince.  
25 Q. Please describe your physical condition at the time that  
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68TGD0EH Jane Doe II - direct  
1 you arrived where your husband and your children were.  
2 A. I was crying a whole lot, and I was to that point unable to  
3 tell them what was wrong with me. The people where my husband  
4 stayed took care of me. They took care of my wound in my foot,  
5 and also they took care of the ordeal I had in the head.  
6 Q. Ms. Doe, how did the ordeal that you lived through that  
7 night, how did that change your life?  
8 A. Up to now -- I tell anybody, up to now, I am traumatized.  
9 Q. Do you have any physical problems that you suffer still  
10 today?  
11 A. Yes. I suffer.  
12 Q. Do you feel that you suffer in an emotional sense still  
13 today?  
14 A. Yes.  
15 Q. Describe, please, for the court how you feel that type of  
16 emotional suffering today.  
17 A. Today, doctors are telling me that I have heart problems.  
18 Also my dog passes things keeps going up, like tears, before  
19 the end of night, and I had a good life. Today that I, before  
20 here, I probably would come here to visit or maybe eventually  
21 obtain my residence.  
22 THE INTERPRETER: Counsel, I'm going to ask her to  
23 repeat, because I think I lost her there, if you don't mind.  
24 A. I could be nowadays -- instead of sitting here, I could be

13 you will have to leave Port-au-Prince. Get away from  
14 Port-au-Prince, because they sent us to do a job. If we don't  
15 go back and tell Emmanuel Constant that whatever we had to do  
16 was done, it would not be good for us. I should go to look for  
17 asylum or leave Port-au-Prince.  
18 Q. To be clear, was it these men who told you that you needed  
19 to go away out of Port-au-Prince?  
20 A. One of them told me that, but all the others wanted me to  
21 be killed.  
22 Q. After these men left, what did you do?  
23 A. After that --  
24 THE INTERPRETER: Your Honor, this is the interpreter.  
25 I'm going to ask her again to break down what she said.  
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68TGD0EH Jane Doe II - direct  
1 THE COURT: Go ahead.  
2 A. I was afraid to remove the blindfold that I had on, because  
3 I knew if I removed the blindfold from my eyes, they would know  
4 that I would recognize them, and at that point they would  
5 decide to kill me.  
6 Now, when I heard the noise of the cars and there were  
7 people -- I heard people passing by, people were talking, I  
8 said to myself my goodness, maybe it's daybreak. I tried  
9 little by little to remove the blindfold from my face. Now,  
10 when I looked around and I didn't see anybody, I removed it.  
11 Q. And what did you see surrounding you at that time where they  
12 were going to shoot me?  
13 A. What I saw, you see where they had a stand where they  
14 were going to shoot me, they had a gun down, it's place where there  
15 were a lot of bad smells, because they killed an awful lot of  
16 people there.  
17 Q. Did you recognize that place as Titwla, in fact?  
18 THE INTERPRETER: Your Honor, I have to ask her --  
19 THE COURT: Go ahead.

25 coming to this country to visit or maybe even obtain a  
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68TGD0EH Jane Doe II - direct  
1 residence, but I believe I probably would be at home better off  
2 living and going about my business.  
3 Q. And when you say "at home," where do you mean?  
4 A. I'm referring to Haiti.  
5 Q. How has the attack that you suffered in Haiti affected your  
6 relationship with people today?  
7 A. That makes me -- I became intimidated when I have to talk  
8 about what I went through in front of people.  
9 Q. Why did you decide to bring this case here today?  
10 A. It has been a long time. It has been 15 years that I've  
11 been fighting for justice and reparation, and today I say thank  
12 you to God for having arrived at this level, and today, I  
13 will never forget what I went through, but I ask God for  
14 courage, and also for all my other friends who have been  
15 through the same thing as I have been through. And I say thank  
16 you to God today I can find justice, the justice I've been  
17 seeking for 15 years already. And I want to thank everybody  
18 present here today for their courage and for listening to me,  
19 and also for my friend, my friend who has witnessed before me  
20 this morning.  
21 MS. FEENEY: Thank you. No further questions.  
22 THE COURT: All right.  
23 THE WITNESSES: Thank you.  
24 THE WITNESSES: Thank you.  
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68TGD0EH Jane Doe II - direct

1 THE COURT: Next witness for the plaintiffs.  
2 MS. WOELFEL: Plaintiffs call Mary Fabri, your Honor.  
3 THE LAW CLERK: Please raise your right hand.  
4 MARY FABRI,  
5 called as a witness by the Plaintiffs,  
6 having been duly sworn, testified as follows:  
7 THE LAW CLERK: Please state your name and spell your  
8 last name for the record.  
9 THE WITNESS: It's Dr. Mary Fabri, F-a-b-r-i.  
10 THE COURT: Good afternoon. Welcome. Please be  
11 seated. Your witness.  
12 MS. WOELFEL: Thank you, your Honor.  
13 DIRECT EXAMINATION  
14 BY MS. WOELFEL:  
15 Q. Good afternoon, Ms. Fabri. Can you tell the Court your  
16 occupation?  
17 A. Yes. I'm a clinical psychologist.  
18 Q. And can you briefly describe for the Court your educational  
19 background?  
20 A. Yes. I have a bachelor's degree from the University of  
21 Illinois in cultural anthropology, and I have a doctorate  
22 degree in psychology from the Illinois School of Professional  
23 Psychology.  
24 Q. Are you presently a member of any professional  
25 organization?  
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68TGD0EH Fabri - direct  
1 A. Yes. I'm a member of the American Psychological  
2 Association, the Illinois Psychological Association, the  
3 International Society of Traumatic Stress and the World  
4 Federation of Mental Health.  
5 Q. Where are you presently employed?  
6 A. I'm employed at the Marjorie Kovler Center for the

13 Q. And can you describe your experiences in Rwanda  
14 specifically working with rape victims.  
15 A. The population I've been working with in Rwanda for the  
16 last two years are women who have survived rape from the  
17 genocide in 1994. So it's looking at the long-term  
18 consequences of rape.  
19 Q. Can you briefly describe for the Court your work prior to  
20 joining the Kovler Center?  
21 A. My work history?  
22 Q. Yes.  
23 A. Prior to being hired as the director of the Kovler Center,  
24 I was on a grant to provide refugee mental health training  
25 nationally. Prior to that, I was director of the program that  
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68TGD0EH Fabri - direct  
1 was initiated to serve Bosnian refugees that were being  
2 resettled in Chicago, and prior to that, I was a staff  
3 psychologist at Cook County Hospital.  
4 Q. And are any of those work experiences that — experiences  
5 that you have just described, do any of those specifically  
6 involve working with victims of torture?  
7 A. Pretty much, you know, starting in '87 with volunteering at  
8 the Kovler Center was my introduction to working with torture  
9 survivors, and it was that volunteer history that led to my  
10 being hired to help implement the Bosnian mental health  
11 program. And I think it's been pretty well publicized that  
12 there were a couple camps and rape was a very integral part of  
13 the strategy of the Bosnian war, a very integral part of  
14 sexual violence, sexual assault, rape as a part of  
15 torture.  
16 Q. Have you ever been published on the issues of rape —  
17 A. Yes.  
18 Q. — and torture? And can you just briefly describe for the  
19 Court what those publications are.

7 Treatment of Survivors of Torture of the Heartland Alliance in  
8 Chicago, Illinois.  
9 Q. And can you describe for the Court what type of work the  
10 Kovler Center does?  
11 A. Yes. The Kovler Center is a treatment center for torture  
12 survivors. Therefore, it's refugees and political asylum  
13 seekers. We provide comprehensive services. So medical,  
14 psychological and social services.  
15 Q. And when was the Kovler Center founded?  
16 A. In 1987.  
17 Q. Was the Kovler Center one of the first treatment centers  
18 that focused specifically on torture victims?  
19 A. Yes. It was the second one formed in the United States.  
20 Q. And how long have you been with the Kovler Center?  
21 A. In 1987, I was one of the pro bono clinical psychologists  
22 that got involved, and in 2000, I was hired as the director.  
23 Q. So you've been with the Kovler Center since its inception?  
24 A. That's right.  
25 Q. Can you describe for the Court your job duties at the  
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68TGD0EH Fabri - direct  
1 Kovler Center.  
2 A. Well, my current responsibilities are as director of  
3 torture treatment services and international training. So I  
4 oversee the clinical services of the Kovler Center, providing  
5 supervision and direction. I'm also involved in training in  
6 Guatemala, Haiti, and Rwanda.  
7 Q. Do you have any specific experience working with victims of  
8 rape?  
9 A. Yes. Rape is a very integral part of torture. It's very  
10 prevalent that men and women are both raped as part of their  
11 torture.  
12

19 A. I have a chapter and a book on torture, and then I have a  
20 chapter specifically about Bosnians in a mental health manual.  
21 And then I have two professional journal articles on torture.  
22 Q. Have you ever provided expert testimony in the field of  
23 psychological effects of rape or torture?  
24 A. Yes. As part of providing assistance to asylum seekers,  
25 when appropriate, we prepare affidavits in support of their  
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68TGD0EH Fabri - direct  
1 asylum claims. And in those situations, I've been an expert  
2 witness, testimony sometimes just on the diagnosis of PTSD and  
3 sometimes in support of someone's specific claim.  
4 MS. WOELFEL: Your Honor, at this time we'd like to  
5 move to have Ms. Fabri qualified as an expert on the  
6 psychological impact of rape and torture.  
7 THE COURT: All right. As before, I'll allow opinion  
8 questions to be asked of this witness.  
9 MS. WOELFEL: Thank you, your Honor.  
10 BY MS. WOELFEL:  
11 Q. Ms. Fabri, have you had the opportunity to meet with Jane  
12 Doe S I and II in connection with this matter?  
13 A. Yes. I've met with both of them.  
14 Q. And as a result of your meeting with them, did you prepare  
15 reports?  
16 A. Yes. I conducted psychological evaluations on each.  
17 Q. I'm just going to hand you this exhibit binder. And if you  
18 could turn to Exhibit 7 and 8 in the binder, please.  
19 A. Um-huh.  
20 Q. Are those the reports that you prepared after meeting and  
21 evaluating Jane Doe I and Jane Doe II?  
22 A. Yes, they are.  
23 MS. WOELFEL: Your Honor, we'd like to offer Exhibit 7  
24 and Exhibit 8 into evidence.

68TGD0EH Fabri - direct  
1 (Plaintiffs' Exhibits 7 and 8 received in evidence)  
2 THE COURT: 7 is --  
3 THE WITNESS: 7 is Jane Doe I.  
4 THE COURT: And 8 is Jane Doe II?  
5 THE WITNESS: Yes.  
6 MS. WOELFEL: That's correct. And we've also provided  
7 the Court with unredacted copies of those reports, which are in  
8 the manila envelope.  
9 THE COURT: Yes.  
10 Q. Now, how many times did you meet with Jane Doe I and Jane  
11 Doe II?  
12 A. I met with each of them separately, but over two days.  
13 Q. So two days for each --  
14 A. That's right.  
15 Q. And what was the purpose of your evaluation?  
16 A. I was asked to conduct an evaluation, and so as part of the  
17 evaluation, I spent as much time as I was able to over the two  
18 days that was available and conducted a diagnostic interview,  
19 along with other standardized instruments and checklists.  
20 Q. Just referencing your report related to Jane Doe I, can you  
21 tell the Court the dates that you met with Jane Doe I.  
22 A. Yes. I met with Jane Doe I in March the 11th and 12th.  
23 Q. And approximately how many hours did you spend with Jane  
24 Doe I?  
25 A. Just let me think a second. Approximately 10, 11 hours

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68TGD0EH Fabri - direct 109

7 Q. And what were those?  
8 A. The first one was the disappearance of her husband, and  
9 after that disappearance, it altered the ability of her to take  
10 care of her family, but at the same time, when they -- she  
11 didn't take it sitting down, and she became vocal and really  
12 spoke out about this disappearance and asked where her husband  
13 was. She then was detained and beaten as an attempt -- she  
14 described as an attempt to silence her, but it didn't. She --  
15 in a way, this politicized her, and she became an activist  
16 seeking justice now, I think for her husband, but her husband  
17 also represented a larger problem.  
18 Q. And could you describe how this activism changed her life?  
19 A. Well, one of the things that happened was she was now a  
20 single parent, and so she had to move her family to a poor  
21 neighborhood. And so the quality of their life shifted, but at  
22 the same time, she maintained the sense of needing to seek  
23 justice while she did the best she could to take care of her  
24 kids.  
25 Q. Did Jane Doe I describe for you a specific event that

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68TGD0EH Fabri - direct 111

1 occurred in April of 1994?  
2 A. Yes, she did.  
3 Q. And what did she describe for you?  
4 A. She described that in the middle of the night, her home was  
5 broken into. They were asleep, and then entered her home. They  
6 beat her. They beat her oldest child. And then they raped her  
7 her. They gang raped her. They each raped her in front of her  
8 children.  
9 Q. And did she discuss with you the emotional impact of being  
10 raped in front of her children?  
11 A. She felt incredible -- she described incredible humiliation  
12 and shame, and then fear about her own safety. And it was

1 over two days.  
2 Q. And can you describe, just generally, what you did in your  
3 first meeting with Jane Doe I.  
4 A. I brought with me a packet that included some checklists,  
5 some of them are standardized instruments. I conducted a  
6 mental status exam and also a clinical diagnostic interview.  
7 Q. And in that interview, did you discuss Jane Doe I's  
8 background information?  
9 A. Yes. Part of that is taking demographic and history.  
10 Q. And can you explain to the Court why eliciting background  
11 information from a client is important?  
12 A. It's important to understand someone's life prior to  
13 traumatic events, what was the quality of their life, so that  
14 you can assess what kinds of changes have taken place, not only  
15 in their emotional functioning but also in their physical  
16 environment.  
17 Q. And did Jane Doe I describe for you the quality of her life  
18 prior to the traumatic event that you also discussed with her?  
19 A. Yes.  
20 Q. And can you just briefly --  
21 A. Yes.  
22 Q. -- describe --  
23 A. Although she grew up in a childhood of poverty, it seemed  
24 what she described as she became older and married and started  
25 her family was a very stable, intact family with a husband who

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68TGD0EH Fabri - direct 110

1 brought in the income. She brought in income. They were able  
2 to provide well for their children. And she described her life  
3 as good.  
4 Q. Did Jane Doe I describe for you any specific event or  
5 events that changed her life?  
6 A. Yes, she did.  
7 after that time she also began to have some symptoms that she  
8 didn't have prior to that.  
9 Q. And what symptoms are those?  
10 A. Well, she was anxious and nervous and mistrustful and  
11 fearful.  
12 Q. And did Ms. Doe describe for you an event that occurred  
13 just a few months later in June of 1994?  
14 A. Yes. I think it was in a matter of weeks, actually. Five  
15 or six weeks later the same thing happened where her home was  
16 invaded, and again she was beaten, she was kicked and raped,  
17 gang raped in front of her children.  
18 Q. Did Jane Doe I seek medical attention at any time or  
19 discuss with you the fact that she sought medical attention  
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68TGD0EH Fabri - direct 112

1 after the second attack?  
2 A. Well, after that attempt, she described being very afraid  
3 and living on the streets, essentially, sleeping in the woods.  
4 Her children had to beg for food. And she took handouts  
5 wherever she could. At some point, someone told her about a  
6 U.S.-funded program that was providing assistance. And after a  
7 few months of living under these conditions and really  
8 experiencing herself not feeling well, she decided to make her  
9 way to seek assistance, and it was during that time she  
10 accessed medical care and, after an exam, was informed that she  
11 was pregnant, and also was able to access some social  
12 services.  
13 Q. Did you discuss with Jane Doe I her emotional response to  
14 learning that she was pregnant as a result of these rapes?  
15 A. Well, you know, I think as she described it, that she knew  
16 that the pregnancy was a result of the rapes. She didn't know  
17 who the father was. She really didn't want to have a child  
18 that was a product of a rape, but she also at the same time

19 described it wasn't the baby's fault. And so she -- after the  
20 birth of this child, she said she essentially lived with this  
21 tension between having a son who is a part of -- a product of  
22 her body that she loves and cares for, that at the same time on  
23 a daily basis she lives with this reminder of what happened to  
24 her.  
25 Q. Did that emotional struggle continue for Jane Doe I today

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Fabri - direct

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68TGD0EH  
1 with respect to her son?  
2 A. It does. In fact, she's been separated from them since she  
3 came to the United States, and she told me that -- she actually  
4 showed me a picture of her children and pointed out the son.  
5 And she said, you know, I look at this picture, and I get a  
6 headache. But she said, at the same time, I miss him. He's my  
7 son, so I think that this ongoing conflict about who the son is  
8 and what he represents and then also concerns about how am I  
9 going to raise this son. I have to tell him what happened. I  
10 don't know who his father is, and he's asking. And so it's --  
11 you know, it's this ongoing struggle for providing for this  
12 child and parenting.  
13 Q. As part of your evaluation, did you discuss Jane Doe I's  
14 present life?  
15 A. Yes.  
16 Q. And can you explain your evaluation in this regard?  
17 A. Sure. You know, part of a diagnostic interview is asking  
18 the questions, asking the history, what happened before, what  
19 was the trauma, and then, what is the current  
20 functioning. And one of the ways of assessing current  
21 functioning is to try to get a snapshot of how is the person  
22 doing. So it's very common to assess a 24-hour period as if  
23 it's an average assessment.  
24 And so what she described is going to be pretty early

25 In the evening, like 8:00 or 9:00, but not being able to fall

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1 asleep, and that during this time she has intrusive thoughts  
2 and memories. She described not being able to turn off her  
3 thoughts, that they're always there. As she lies in bed, she  
4 thinks about what happened to her and the changes in her life,  
5 the rapes, her child, who's the product of the rape, being  
6 separated from her children, the loss of her husband, the  
7 beatings that she suffered. All that just runs through her  
8 head.  
9 And then she said eventually she may fall asleep by  
10 1:00, and then if she -- she has to get up at five, and she may  
11 sleep till 5:00 or wake up with a nightmare. And when she has  
12 a nightmare, she wakes up disoriented, or she has heart  
13 palpitations, she's sweating, she can't put that memory out of  
14 her mind. And so she'll lay in bed, and the thoughts are  
15 running through her head. And then she gets up in the morning  
16 and she goes to work.  
17 She described work as very difficult. She said, I  
18 mean, I'm a good worker, but I can't always work to the best of  
19 my ability, because if I'm distracted by what's going on in my  
20 head, it may affect my productivity.  
21 She talked about not trusting her coworkers,  
22 considering them acquaintances, not wanting relationships with  
23 them. She feels that she can't disclose to people who she  
24 really is and what life is like for her, that she can't trust  
25 people. So her life is very complicated, full of mistrust  
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1 and internal anxiety symptoms, a lot of internal processes that  
2 interfere with her ability to feel engaged in life.  
3 Q. What does the description of a typical day for Jane Doe I  
4 tell you with respect to the symptoms associated with her  
5 trauma?  
6 A. You know, it talks about the functioning, but you want to  
7 take that as like a snapshot and look at it within the context  
8 of all the other information that I was able to collect over  
9 the time I spent with her. So I look at the narrative  
10 information I collected. I look at that snapshot of how she's  
11 functioning. I look at checklists that I went down, sort of  
12 problem checklists and descriptors she gave me, as well as  
13 using some three standardized instruments.  
14 Q. Let's talk about those three standardized instruments. Can  
15 you describe for the Court the three tests that you did conduct  
16 on Jane Doe I.  
17 A. I used the Hopkins symptom checklist, which has ten  
18 questions about anxiety and 15 questions about depression, and  
19 then you get a score. And it's been normed on -- it's  
20 cross-culturally. It's a very reliable instrument  
21 that can get an anxiety diagnosis, a depression diagnosis or PTSD.  
22 Post-traumatic stress disorder really is a complication of  
23 anxiety and depression and other symptoms, and it can give you  
24 an indicator of post-traumatic stress.  
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1 The second instrument is called the impact of life,  
2 impact of event scale, and it asks people to give a subjective  
3 measurement of how a specific traumatic event impacts their  
4 life and how it is affecting their current functioning.  
5 And then lastly, there's a World Health Organization  
6 quality of life measurement. Again, it was developed

7 cross-culturally, and it looks at different domains of people's

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1 questions are asked in the last two weeks how much has this  
2 event impacted your functioning in these ways, a little bit,  
3 moderately, extremely, not at all.  
4 Q. Okay, in the time you took this test in the last two  
5 weeks, the 19 --  
6 A. I was severe.  
7 Q. And with regards to the Hopkins symptoms checklist, can you  
8 describe the 19 --  
9 A. Like a total score, it's anxiety and depression, and if the  
10 score is above 1.75 and it's a matter of each response --  
11 again, a liker is weighted and you add it up and you divide it  
12 and you get a score. But 1.75, if someone has a score equal to

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13 or greater than 1.75, they're considered of the diagnosis. And  
14 her scores were above 3. They were like 3.2, 3.3.  
15 Q. And with regards to the World Health Organization quality  
16 of life instrument?  
17 A. That -- again, you create a score, and then you compare it  
18 to other people's scores. So there's, like, a normal range.  
19 And it was interesting for her, because in the physical health,  
20 psychological and interpersonal, she showed -- she was much  
21 lower than what people normally would look. So she has  
22 impaired sense of physical health, psychological health and  
23 social health. But her environment score was within normal  
24 range, and when I pointed that out to her, she talked about  
25 feeling safe here. I remember she said something like, you  
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1 know, my poor country Haiti. It's a very dangerous place. At  
2 least here, I'm safe. So her environment score was normal.  
3 Q. Now, looking at the test results that you took, your  
4 interview with the client and just the overall evaluation, did  
5 you make a diagnosis of Jane Doe I?  
6 A. Yes. Yes. Looking at everything comprehensively, you  
7 know, starting down with, like, 10, 11 hours of information and  
8 going through it and looking for themes, and what emerged was  
9 she matched the criteria for post-traumatic stress disorder of  
10 the chronic type, so that it's long term and persistent.  
11 Q. Can you describe what post-traumatic stress disorder is?  
12 A. Um, this is a traumatic event, the first one, actually has three  
13 different symptom domains. The first one, actually has three  
14 symptoms. So the nightmares, the intrusive thoughts and  
15 memories, the inability to concentrate. Jane Doe I also has  
16 flashbacks, which she described where -- a flashback is an  
17 experience where there's a trigger in the environment which  
18 makes someone remember what happened to the point that they

25 and that is avoidance?  
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1 A. Well, there's the domain of reexperiencing, which we just  
2 talked about. Then there's avoidance or emotional numbing, and  
3 I think we see that in her interpersonal relationships where I  
4 had said earlier that she has a very constricted life. She  
5 does not socialize. She keeps to herself. She doesn't share.  
6 There are times where, you know, you -- even though you have  
7 these reexperiencing events, what you're really trying to do is  
8 avoid all that. So she doesn't associate with the Haitian  
9 community at all, because she would -- you know, she's avoiding  
10 all those kinds of memories. So she also demonstrated avoidant  
11 behavior.  
12 And then the third one is hyperarousal symptoms, which  
13 really involves the central nervous system, and she definitely  
14 palpitations, I mean, the excessive perspiration, heart  
15 palpitations, irritability, inability to concentrate at work.  
16 All those are symptoms of sort of being agitated internally.  
17 And so as you look at those three domains, it matches  
18 that -- she has post-traumatic stress disorder, and it's of the  
19 chronic type. It has not resolved.  
20 Q. And is there any hope that it will resolve?  
21 A. You know, unfortunately, post-traumatic stress disorder,  
22 there's no cure for it. It's more a matter of learning to live  
23 with a traumatic history. And that doesn't mean that there  
24 isn't periods of time where people can have a productive way  
25 of even have moments of joy and happiness again, but that  
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19 lose awareness of the here and now and enter a state where they  
20 at a sense level, sight, smell, touch, reexperience the  
21 trauma as if it's happened. And so she also had described  
22 episodes of that to me.  
23 Q. Let me refer you just briefly to page 6 of your report on  
24 Jane Doe I at the bottom paragraph.  
25 A. Uh-huh.  
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1 Q. Can you describe for the court the specific flashback  
2 episode that you note in this report?  
3 A. Right. This has happened in February of 2005 where she  
4 described not really knowing what the trigger was, not really  
5 knowing what happened. Her domestic partner is the one who  
6 informed her, because he ended up taking her to the emergency  
7 room where she ripped off all her clothes and was talking and  
8 acting crazy to him, but inside she described an awareness of  
9 feeling like she was being assaulted again. And so at that  
10 sense experience level, she was being raped again, but the  
11 people around her didn't know what was going on, because none  
12 of that was happening in the here and now.  
13 Q. And looking at the paragraph just above that where she  
14 describes for you her distressing dreams, can you sort of  
15 explain a little bit more fully what types of dreams she's  
16 having and how that is causing PTSD to react.  
17 A. One of the symptoms of PTSD is re-living nightmares.  
18 Often, she described these as the content of the traumatic event,  
19 and she described these consistently of being raped, since being  
20 raped in '94 that she has nightmares of being being raped again  
21 and will wake up in a sweat with her heart beating, and  
22 initially disoriented and be very distressed and upset. And  
23 it's those dreams that she can't go back to sleep.  
24 Q. And I believe you said there was one other symptom of PTSD,

ongoing vulnerability exists that at times when there's stress,  
even if it's perceived stress, those symptoms can surface  
again.  
And we also know that women who have been raped have more  
symptoms, more severe symptoms and more chronic symptoms. So  
rape is a special --  
THE COURT: More severe symptoms and more chronic  
symptoms than what?  
THE WITNESS: Than people who have been -- have a  
traumatic event that doesn't involve rape.  
THE COURT: All right.  
Q. And just going back to your description of Jane Doe I's  
personal relationships, you noted earlier that you describe she  
has a domestic partner. Does the traumatic events that she  
went through -- has that impaired her ability at all to have a  
romantic relationship?  
A. She described her relationship as a relationship of  
convenience, that her domestic partner is a kind man who does  
love her. She says that she does not feel capable of feeling  
love anymore. She says that when I asked her about her sexual  
relationship, she said that he doesn't put a lot of demands on  
her but that when he does approach her sexually, she complies,  
but she has no pleasure, that she just complies because she  
feels she owes it to him because he's good to her and he's kind  
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1 to her. So she also said that sometimes women have to  
2 compromise themselves in order to survive.  
3 Q. Now, looking at your report, if we turn to page 9, under  
4 your diagnosis section you just explained to us that you had  
5 diagnosed Jane Doe I with post-traumatic stress disorder, and  
6 looking at this -- and I see that there are five different axes

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7 on your diagnosis. Can you please explain what those five axes  
8 are and what they mean?  
9 A. Sure. In order to give a full picture of someone's  
10 functioning, you know, not just psychological functioning,  
11 there's the different axes. So an axis 1, which is more about  
12 clinical, psychological functioning, she met the criteria for  
13 post-traumatic stress disorder. Axis 2 is personality  
14 disorders, which are, you know, another realm of diagnosis, and  
15 I didn't see any evidence of personality disorder.  
16 Axis 3 addresses the issues of health, of physical  
17 health. And the whole time I met with Jane Doe I, she had a  
18 headache, and also it was evident when she arrived and when she  
19 left that she had pain in her left leg and at one point even  
20 stumbled. And I thought she tripped on something, but, no, she  
21 described that she has this pain that reoccurs.  
22 And so she has health problems that need to be  
23 addressed. We can't only treat the mind or the emotions. We  
24 have to treat the physical body, too. So she definitely needs  
25 to be able to access some medical care, which she hasn't  
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1 successfully been able to do yet.  
2 And then, in terms of looking at what are the stressors  
3 in her life, you know, there's sort of the internal symptoms,  
4 but also, in addition to that, she's been living separate from  
5 her children who remain in Italy, and she's very worried about  
6 them. She does have her husband to disapprove -- and you know,  
7 raped, and one of the things she described -- and, you know,  
8 it's in the literature that disappearance is a very effective  
9 way of silencing movements in communities, and she very  
10 politely said to me at one point -- you know, she said if he  
11 had been killed and I saw his body, I would bury him and know

19 function okay and that there will be other times where she's  
20 going to have lots of symptoms. The nightmares are chronic.  
21 The intrusive thoughts and memories are chronic.  
22 Q. Let's go ahead and turn now to your evaluation of Jane Doe  
23 II.  
24 A. Okay.  
25 Q. When did you meet with Jane Doe II?  
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1 A. I met with her in January of this year, the 13th and 14th.  
2 Q. And for approximately how many hours?  
3 A. It was six or seven hours. It was over two days.  
4 THE COURT: Counsel, I have the report which I've been  
5 reading. That is the psychological evaluation, both of Jane  
6 Doe I and Jane Doe II. So you don't have to go through some of  
7 the background information. Go ahead.  
8 MS. WOLFEL: Thank you, your Honor.  
9 Q. Now, let's just get to the specific traumatic events that  
10 Jane Doe II described for you. Did she explain any specific  
11 traumatic event?  
12 A. Yes. She also described the home invasion where she was  
13 raped and she and her husband were beaten and they were  
14 blindfolded and taken off.  
15 THE COURT: Is it essentially the testimony that you  
16 heard today?  
17 THE WITNESS: Yes, it is.  
18 THE COURT: -- from Jane Doe II?  
19 THE WITNESS: It is.  
20 THE COURT: Is it consistent in all significant  
21 respects?  
22 THE WITNESS: Yes, very consistent.  
23 THE COURT: Is there any inconsistency that you're  
24 aware of?  
25

13 that he's gone, but he's disappeared, and I keep wondering will  
14 he ever show up again. And so she sort of lives with this  
15 uncertainty of is he dead, is he not dead, and it's actually  
16 a -- it's like a form of torture, of psychological torture of  
17 not knowing.  
18 Q. And does she go through that still today?  
19 A. Absolutely, yeah. She still wonders. She brought it up in  
20 the interview.  
21 And then the last one is looking at, you know, how is  
22 someone functioning. And you know, it's called the global  
23 assessment of functioning scale, and there's different numbers  
24 that you give and there's criteria. And Jane Doe I really --  
25 she continues to have severe symptoms that impact her  
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1 functioning. And you know, yes, she can go to work, but if you  
2 look at the quality of her life, that's basically what she  
3 does. She goes to work.  
4 Q. Now, out of everything that you learned during your  
5 evaluation from Jane Doe I, is there any particular event or  
6 events that you have found impacted her most severely?  
7 A. You know, based on her history and what she kept pointing  
8 to, it was the rapes, that that was devastating to her  
9 psychologically. If you think about the disappearance of her  
10 husband, a part of that activated her to seek out justice,  
11 where as my husband, the rapes really demoralized her  
12 psychologically, and that's when she went into hiding and  
13 psychologically, and that's when she went into hiding and  
14 began based on your evaluation, in your professional opinion,  
15 what is the long-term prognosis for Jane Doe II?  
16 A. Well, you know, she has chronic PTSD. She needs to access  
17 psychological services and learn how to cope and be aware that  
18 there will be periods of time where, you know, she will

25 THE WITNESS: No.  
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1 BY MS. WOLFEL:  
2 Q. Now, I want to focus specifically on the second rape, the  
3 1994. Did she describe to you the emotional impact of the  
4 second rape as opposed to the first, and can you describe that  
5 for the Court?  
6 A. Right. No. She very clearly stated that the second rape  
7 was more traumatic than the first rape. And the first one was  
8 traumatic, but she just said, you know, after the first -- the  
9 home invasion and being raped and being detained and, but the  
10 released, she sort of entered this lifestyle of basic survival,  
11 and I think probably achieved a semblance of false security, so  
12 that when she said she went to visit her brother, to stay at  
13 her brother's house so she could visit her children and that  
14 rape occurred, she said it was like -- it was devastating. She  
15 said I didn't think it would happen to me again. She said once  
16 was enough. You know, she had experienced that, but the fact  
17 that it happened a second time really devastated all sense of  
18 internal security that she had managed to maintain.  
19 Q. And how does that impact her today?  
20 A. Well, you know, I think both rapes, but in particular the  
21 second rape, that she's a very -- it's interesting, because  
22 she's very guarded, although I'm not sure she would describe  
23 herself that way, but she also has a financial amount that keep  
24 people at a distance.  
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1 irritability generated internally of feeling agitated and  
2 insecure and then can -- you know, it interferes with her  
3 having relationships with people that are social. They're more  
4 confrontational, argumentative.  
5 Q. And in your opinion, is this a coping mechanism to dealing  
6 with personal relationships as a result of the 1994 --  
7 A. Right. She's really isolated herself. It's part of that  
8 avoidance domain of symptoms, of how do I keep people at an  
9 arm's length. And it's protective, protective of being in  
10 intimate relationships. She very clearly said at one point  
11 during the interview, I do not like life. And then, when I was  
12 at different times asking her questions about intimacy and  
13 sexual relationships, she just at one point very flatly said, I  
14 do not have relationships anymore, just in a very sort of  
15 flat --  
16 THE COURT: Referring to sexual relationships --  
17 THE WITNESS: Yes.  
18 THE COURT: -- or referring to social relationships?  
19 THE WITNESS: The sexual relationships.  
20 Q. And did you conduct an interview where you obtained the  
21 24-hour snapshot?  
22 A. I did. I did the same assessment, strategies with Jane Doe  
23 II that I completed with Jane Doe I, so, yes.  
24 Q. And what did you learn about Jane Doe II's normal 24-hour  
25 day?

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1 A. So for hour, as she described, you know, going to bed, say,  
2 around ten o'clock, that you know, it's different than Jane Doe I.  
3 I know Jane Doe II can fall asleep. And what's interesting is she  
4 only sleeps a couple of hours. She will fall asleep, she said,  
5 within a half hour or 60 minutes, but she wakes at one  
6 o'clock. Sometimes she's aware of why she's waken up. It

13 prior to my meeting with her in January, she had received a  
14 diagnosis of hypertension, and apparently that was new, in that  
15 it's gotten worse. She had shared with me just recently that  
16 her blood pressure is a real problem, and, you know, oftentimes  
17 blood pressure is impacted by stress levels. So I think  
18 there's probably a connection.  
19 She also has chronic headaches, and the whole time I  
20 met with her complained of having headaches and then the body  
21 pains as well.  
22 Q. Now, you said that her blood pressure could be affected by  
23 your stress level. Did you determine what type of stress that  
24 Jane Doe II is under at the present time?  
25 A. Well, you know, I also gave her a diagnosis of  
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1 post-traumatic stress disorder, and I mean basically she  
2 experiences her life as very difficult, you know, raising four  
3 kids and as a single mom and having to work and then having  
4 these intrusive thoughts and memories and having this  
5 constricted lifestyle of not having a lot of supportive  
6 relationships or a network to help her. So she's isolated and  
7 has all this internal stimuli, and, you know, it's a stressful  
8 life. And she said at some point -- she said, I am stressed,  
9 very stressed.  
10 Q. Now, did you conduct the objective standardized test?  
11 A. Yes.  
12 Q. And what did the Hopkins test tell you with regard to Jane  
13 Doe II?  
14 A. You know, again, looking at the cutoff point of 1.75 as  
15 being an indicator of a diagnosis. Jane Doe II scores her,  
16 like composite score was 2.3, so above. She meets the  
17 criteria for a post-traumatic stress disorder diagnosis.  
18 Impact of event scale, she did both rape events separately, and

7 might be a bad dream. Other times she doesn't know why she  
8 wakes up. She just wakes up and has a very difficult time  
9 going back to sleep. And that's when she'll begin to think  
10 about what happened to her and what's going on in her life and  
11 all her problems and worries. Sometimes she can fall back to  
12 sleep. Sometimes she can't.  
13 She also gets up and, you know, goes to work. Also  
14 describes very similarly, I don't have friends; I have  
15 acquaintances. I do my job. I'm a good worker; I come home.  
16 My kids are here. I cook for them. I do laundry. I clean.  
17 And she described the week as feeling like she can get through  
18 it. And she described the weekends as being more difficult,  
19 because she doesn't have all the distractions that work give  
20 her and that those are the -- she finds the weekends very  
21 difficult. And she said, you know, she's more irritable on the  
22 weekends. She thinks about what happened more often. And I  
23 think it was at that point she just said, I don't like my life.  
24 I don't like life.  
25 Q. Did Jane Doe II describe any physical pain that she --  
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1 A. Yes.  
2 Q. -- presently associates with the 1994 attack?  
3 A. Yes. She described that part of being pushed down. She  
4 was kicked in the -- in her stomach and she was kicked in the  
5 back, and she described having anniversary pains, that whenever  
6 she has these, she'll have the two or three days of pelvic  
7 pain and stomach pain and back pain. And that's not  
8 uncommon in women who have had a rape, that they will have  
9 anniversary body pain.  
10 Q. Does she describe any other difficult pain?  
11 A. Well, the one thing that she shared with me is that just

19 both of them fell into the severe range of impact, although the  
20 one in '94 had a higher score, that it impacts her more.  
21 And then also in the quality of life, it was  
22 interesting. I think there's probably been some deterioration  
23 in her health, because she fell in the normal range for the  
24 physical environment, also indicating that being here she felt  
25 safer, but she also felt like her physical health was okay but  
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68TGD0EH Fabri - direct  
1 did identify that her interpersonal relationships and her  
2 psychological well-being was severely impaired.  
3 Q. Now, just turning to page 10 of your report regarding Jane  
4 Doe II, I just want to quickly go through your diagnosis and  
5 the five different axes that you outline here. Can you  
6 describe for the Court what diagnosis you gave for Jane Doe II  
7 under each of these different axes?  
8 A. Sure. So axis I, which is the clinical diagnosis as  
9 post-traumatic stress disorder of the chronic type, and it's  
10 also severe. No evidence of a personality disorder.  
11 Medical concerns were the hypertension, which had been  
12 earlier diagnosed, the chronic headaches and then just  
13 generalized physical pain, very specifically in the pelvic  
14 region during her anniversary months, but just really reported  
15 having a lot of physical pain.  
16 Q. Again, she has a history of being tortured, of being  
17 raped. She's separated from her family of origin and  
18 significantly talked about the fear that her distress is  
19 electrically not being there for her mom. And then just the stresses  
20 of having four kids as a single mom, and you know, three of  
21 them are teenagers, that that was a stress for her as well.  
22 And then looking at her global assessment of  
23 functioning and the number of symptoms and how it impacts her

25 Life, that very limited engagement in life outside of work put  
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1 her into the severe range of symptoms.  
2 0. And is it your opinion that Jane Doe II will continue to  
3 suffer symptoms of post-traumatic stress disorder for the  
4 continuation of her life?  
5 A. You know again, it's a similar thing. You know, rape does  
6 terrible things to women's psychological well-being and  
7 physical health, and she has to live with that, knowing that  
8 there are times where she'll feel better than other times but  
9 that it's a chronic problem.  
10 MS. WOELFEL: I don't have any other questions for  
11 you, Dr. Fabri. Thank you so much for your time.  
12 THE COURT: All right. Thank you, Doctor. You are  
13 excused. You may step down.  
14 (Witness excused)  
15 THE COURT: Are there any other witnesses for the  
16 plaintiffs?  
17 MS. SAMSÓN: There are no more witnesses, your Honor.  
18 Before we conclude, I forgot to ask to have the exhibits  
19 identified during the course of Dr. McGuire's testimony,  
20 Exhibits 1 through 6 and No. 9, received into evidence.  
21 THE COURT: All right. Well, let's go through those,  
22 and we'll do it one by one, attach communication. It states  
23 as of the 11th of October, that's admitted in evidence  
24 (plaintiffs' Exhibit 1, received into evidence)  
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7 MS. WOELFEL: But we do have the excerpts from the  
8 constant deposition that were referenced on some of the  
9 graphics, and we would like to submit those to the Court in  
10 Exhibit 11.  
11 THE COURT: All right. Hand it up, if you would. 11  
12 is the constant deposition exhibits — I mean excerpts. Are  
13 those the ones that were on the chart that I saw?  
14 MS. WOELFEL: That's correct.  
15 THE COURT: All right. Those are admitted as 11.  
16 (Plaintiffs' Exhibit 11 received in evidence)  
17 THE COURT: And what I'm going to do is you've  
18 presented with me and sealed the original unredacted versions  
19 of Exhibit 7 and Exhibit 8, the Fabri report. Is that correct?  
20 MS. WOELFEL: Yes, your Honor.  
21 THE COURT: And Exhibit 7 and Exhibit 8 have been  
22 redacted simply to take out the identifying information.  
23 Correct?  
24 MS. WOELFEL: That's correct.  
25 THE COURT: All right. I'm going to hand back to you  
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1 the part that you wanted sealed, because I don't think there's  
2 any need for it to be in the record.  
3 MS. WOELFEL: Okay.  
4 THE COURT: What we have is the redacted version,  
5 which I think are adequate, given the fact that the sealed  
6 portions on the record will reflect the names of Jane Doe I and  
7 Jane Doe II.  
8 All right. Is there anything else?  
9 MS. SAMSÓN: Your Honor, prior to submitting this  
10 matter, I would ask permission to make a short closing  
11 argument. THE COURT: Go ahead.

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1 THE COURT: 2 is the State Department telex. Is that  
2 correct?  
3 MR. SAMSÓN: It's a document, I believe, from the CIA.  
4 THE COURT: CIA. All right. That's admitted.  
5 (Plaintiffs' Exhibit 2 received in evidence)  
6 THE COURT: 3 was a picture of Constant. It's  
7 admitted.  
8 (Plaintiffs' Exhibit 3 received in evidence)  
9 THE COURT: 4 is the April 16, 1994 Washington Post  
10 photograph. Admitted.  
11 (Plaintiffs' Exhibit 4 received in evidence)  
12 THE COURT: 5 was the John Shattuck article from the  
13 Miami Herald article July of '94. Admitted.  
14 (Plaintiffs' Exhibit 5 received in evidence)  
15 THE COURT: 6 is the Civilian commission in Haiti  
16 press release of May 1994 which was referred to. Admitted.  
17 (Plaintiffs' Exhibit 6 received in evidence)  
18 THE COURT: Are you seeking admission of 7, the  
19 evaluation of Dr. Fabri of Jane Doe I?  
20 MS. WOELFEL: I think you've already admitted that.  
21 THE COURT: All right. And what about 8? That's Jane  
22 Doe II.  
23 MS. WOELFEL: Yes.  
24 THE COURT: And then 9 and 10 I believe I've already  
25 admitted.  
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Fabri - direct

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68TGD0EH MS. WOELFEL: That's correct  
1 receive the memorandum on damages that was filed, I believe,  
2 last Friday?  
3 THE COURT: Yes.  
4 MR. SAMSÓN: Okay. Then I won't repeat myself, but  
5 essentially the law provides for punitive and compensatory  
6 damages in a case like this. And the purposes of punitive  
7 damages are straightforward. The purpose of punitive damages,  
8 as the Court is aware, is for punishment and for deterrence.  
9 And I think both are called for here.  
10 THE COURT: Say that last phrase again. Punishment  
11 and deterrence. Then what did you say?  
12 MR. SAMSÓN: And I believe that both are called for  
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1 here, one, to punish Mr. Constant for what are clearly wanton,  
2 oppressive and malicious actions; and, secondly, as a  
3 deterrent, as a word to the international community that this  
4 kind of conduct can't be tolerated and that the United States  
5 has laws, the AIS and the TVPA, to discourage and to prohibit  
6 this kind of conduct wherever it's carried out.  
7 And in determining what's an appropriate amount of  
8 punitive damage award, the Court has to look at the degree of  
9 malice — how egregious the conduct is and to look at really  
10 the degree of the revulsion that this conduct generates in the  
11 international community. And here, we're dealing with torture  
12 in the form of beating and the form of rape, and sexual  
13 clearly and grossly against humanity, and violence.  
14 Based on Professor McGuire's testimony, it's clear  
15 that the defendant, Mr. Constant, is clearly responsible for  
16 the crimes that were committed against the plaintiffs through  
17 his command and control and leadership of the paramilitary  
18 organization FIAAPH. He was the head of the organization. It

19 was functioning. It was an arm and in conjunction with the  
20 military, it was funded by the military, and it engaged in a  
21 systematic conduct and pattern of murder, rape, and torture.  
22 And FRAPH did the military's dirty work, and FRAPH was the  
23 muscle. And that's acknowledged by Mr. Constant himself.  
24 And with the Court's permission, I'd like to play -- I  
25 think it's about an 18-second videotape of Mr. Constant  
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1 excerpted from a 60 Minutes interview. I can give you a date.  
2 THE COURT: 60 Minutes being the TV interview?  
3 MR. SAMSON: Right, being the TV show.  
4 THE COURT: All right.  
5 (Video recording played)

6 MR. SAMSON: Mr. Constant is clearly an articulate and  
7 well-spoken man. He's talking about muscle, and he's talking  
8 about doing the military's dirty work through a deliberate  
9 policy of rape, torture, murder, and intimidation.  
10 You heard testimony from Mr. McGuire and in the  
11 article by Mr. Shattuck that there was an increase -- a  
12 dramatic increase in rape when FRAPH came to power in 1993.  
13 You heard Mr. McGuire testify based on Mr. Constant's  
14 leadership he simply had to know of the rapes. He had to  
15 know --

16 THE COURT: Had to know of them?  
17 MR. SAMSON: Of the rapes, your Honor. He had to know  
18 that this was a policy of FRAPH, and there was simply no way  
19 that he could not have known it. McGuire was stating his  
20 leadership role and given his command structure, that  
21 Mr. Constant could have stopped it if he had wanted to, and he  
22 did not. I won't comment on the testimony of Jane Doe I or Jane  
23 Doe II, but the Court heard it in its entirety, and I think it  
24

25 speaks powerfully for itself.  
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1 The Court has seen the videotaped deposition of  
2 Dr. Lerman describing the physical injuries of the two  
3 plaintiffs, in particular of Jane Doe I living with an  
4 untreated stab wound to the breast for some period of time, and  
5 you heard his testimony that the stab wound to the neck was  
6 potentially life-threatening, being in the area of critical  
7 veins and arteries and other parts.  
8 You also heard his testimony about the physical  
9 injuries to Jane Doe II.

10 Dr. Fabri's testimony, I guess, puts it in more  
11 clinical terms, as the Court observed with the testimony of  
12 each of these victims, that, you know, for Jane Doe I, how do  
13 you evaluate the psychological conflict of raising and loving  
14 the child of rape but yet a child who reminds you of all those  
15 bad things that happened? You heard Dr. Fabri say that Jane  
16 Doe I and Jane Doe II can't turn off the memories, that it  
17 interferes with their relationships. It interferes with their  
18 ability to really have any form of life.  
19 Dr. Fabri testified that for Jane Doe I, all she does  
20 is go to work and that the rape -- I took this down --  
21 substantially demoralized her psychologically. And that's  
22 something that Jane Doe I is going to essentially live with for  
23 all of her life.  
24 For Jane Doe II, a second rape that was terribly  
25 traumatic in addition to the first, which was bad enough, and  
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1 Dr. Fabri testified that Jane Doe II told her that she doesn't  
2 like life. And you know, life is one of our blessings. We  
3 should all enjoy it, sure enough. And to say that you don't  
4 like life, that's being condemned to something pretty terrible.  
5 And that is an ongoing fate that she's going to suffer every  
6 day for her life.

7 And, you know, in our memo on damages, we try to say  
8 how do you deal with this. And I know that Courts every day in  
9 every state in this country award millions of dollars to  
10 plaintiffs where defendants have engaged in reckless conduct or  
11 negligent conduct that results in damages of some kind or  
12 another, physical damages or economic harm, but here, we're not  
13 talking about reckless conduct or negligent conduct.

14 Mr. Constant was at the head of an organization which  
15 engaged in egregious, wanton and malicious conduct, and how do  
16 you evaluate the cost of being raped? How do you evaluate the  
17 cost of seeing -- knowing that your family, your children watch  
18 you being raped? How do you value the cost of being beaten,  
19 being thrown in prison? How do you value the cost of raising a  
20 child that's the product of a rape? How do you value the cost  
21 of fear? And how do you value the cost of reliving all those  
22 memories of the last 14 -- I guess 13, 14 years and going  
23 forward over the next 30 or 40 years, whatever their natural  
24 life may be? The quality of their lives have been  
25 substantially, substantially destroyed, and we respectfully  
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1 request the Court, that you award each plaintiff compensatory  
2 damages in the amount of at least \$1 million and punitive  
3 damages consistent with the Campbell decision, which allows  
4 punitive damages essentially up to nine times the amount of  
5 compensatory damages.  
6 THE COURT: It does seem to be focusing on

7 single-digit punitive damages.  
8 MR. SAMSON: Yes, your Honor. Thank you.  
9 THE COURT: All right. Thank you. I appreciate it.  
10 I appreciate all the effort that went into this. I think the  
11 next thing is to see what the position of the State Department  
12 is. If they do have a position, then I'll expect a response  
13 from the plaintiffs. All right. Thank you very much.  
14 obo

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# EXHIBIT

15

**ORGANIZATION OF AMERICAN STATES  
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

**COMMUNICATION RESPECTING THE VIOLATIONS  
OF HUMAN RIGHTS OF HAITIAN WOMEN**

Submitted by advocates and attorneys from the following organizations and academic programs: Haitian American Women's Advocacy Network, Asoysyan Fanm Ayisyen Nan Boston (Association of Haitian Women in Boston), Fanm Ayisyen Nan Boston (Haitian Women in Boston), Haiti Communications Project, HAITIwomen, MADRE, the International Women's Human Rights Law Clinic at the City University of New York School of Law, the Human Rights Program and the Immigration and Refugee Program at Harvard Law School, the Women Refugees Project of Harvard Law School and Cambridge and Somerville Legal Services, the Center for Human Rights Legal Action, the Center for Constitutional Rights, and the law firm of Morrison and Foerster.

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## I. INTRODUCTION

This Country Conditions Communication brings together testimonies, human rights reports, and news reports concerning the violence and abuse visited upon Haitian women by the illegal regime presided over by General Raoul Cedras.

The documentation summarized in **Part II** reveals the gender dimension of this brutal war on the civilian people of Haiti. It demonstrates the use of rape and other sexual and reproductive abuse as sex-specific forms of violence and instruments of terror. It describes the targeting of women for abuse because of their political support for democracy, their intimate association with other activists, their class, and because of their gender, that is, the view of women as property, their roles as breadwinners and activists for women's rights, and their particular role as biological reproducers and maintainers of families and civilian society.

We have focused on the violence against women because, in the spirit of the 1993 Vienna Conference on Human Rights, recognition and vindication of the violations of Haitian women's human rights is part of their entitlement as human persons and as equal citizens. It also is essential to the process of their healing and empowerment, to their ability to enjoy the exercise of all human rights and fundamental freedoms, and to their ability to participate fully and equally in all aspects of life. In **Part III**, we ask the Commission, out of respect for the women of Haiti and for all other women subject to such abuse, to recognize rape and other sexual abuse as a form of torture. We ask for particular recognition of the many ways in which the illegal regime has violated the human rights of women protected by the American Convention on Human Rights and the American Declaration of the Rights and Duties of [ ]Man.

Since the hearing on this Communication before the Commission on September 26, 1994, the illegal Cedras regime has been removed and the democratically-elected President, Jean Bertrand Aristide, has been reinstalled as the leader of Haiti. This relieved the reign of terror in Haiti. It is a thrilling and longed-for moment in which the Commission and other defenders of human rights played a critical role. The end of the illegal regime, however, does not guarantee that the people are secure against continuing attacks by those who remain, nor does it obviate the need for accountability and punishment, including the need to weed out the perpetrators from positions of authority and the potential to do harm in the future. It also does not lessen the need to provide compensation to the victims and survivors and vindicate the horrors that they have suffered.

In this grave moment of settling accounts it is particularly critical that attention remain focused on the human rights violations committed against women. Throughout history, the use of rape as an instrument of repression or war has briefly shocked the conscience but that condemnation has been forgotten all too quickly when the immediate repression or war is over. The crimes against women disappear from history though they remain seared into women's bodies, consciousness and lives. They remain the crimes that women do not dare to name and that society does not dare to take seriously.

The situation in Haiti now presents an historic opportunity for the Commission to play a significant role in assuring that these violations finally will be taken seriously. As outlined in **Part IV**, it is necessary for the Commission to issue a special report on the violations of the human rights of Haitian women. That report must fully acknowledge the egregiousness of those violations by recognizing rape, sexual and reproductive abuse as forms of torture, and make clear the Commission's intention to take the petitions of women seriously. By doing this, this Commission will take a profoundly important step toward encouraging women to come forward and name the crimes against them. If, against the history of silencing and shame, five or ten, or twenty or fifty women come forward, they would begin the process of change and the universalization of human rights on the most profound level.

Women [in Haiti] are widely subjected to gross violations of their human rights because of their political activity in support of democracy; because of their association with or support of the activity of their partners, children and other family members or associates... and because these assaults on women are designed to terrorize and intimidate them because of their central role in the maintaining of civilian society.

Statement of women's organizations to the OAS<sup>1</sup>

Marie, a woman in her fifties, a democratic activist and well-known supporter of President Aristide, was attacked in her home by seven or eight armed men dressed in military uniforms. They beat her son and daughter who were present and forced her son to rape her in front of them and her daughter. The men then gang-raped both Marie and her daughter.

Marie feels that she has lost her family. Neither her son, who was forced to rape her, nor her daughter, who was present during the attack, can bear to look at her. She states, "My family is full of shame. We are dead."

Statement of Mary Healy, Director of  
Washington Office on Haiti, reporting  
on interview in Haiti,  
September 1, 1994<sup>2</sup>

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<sup>1</sup> Organizations representing women in the OAS, Statement to the Secretary General of the OAS, the Member States, and the General Assembly Appendix, Volume I: Documentation Item #32.

<sup>2</sup> Statement of Mary Healy I Appendix, Volume II: Affidavits, Statements and Testimony Item #19; see infra, note 50.

## II. FACTUAL BACKGROUND

### A. Summary and Background

Since the military coup d'état against democratically-elected Haitian President Jean-Bertrand Aristide on September 30, 1991, the illegal regime of Raoul Cedras has committed untold numbers of gross human rights abuses against the civilian population. Reports of the OAS/UN Civilian Mission ("Civilian Mission"),<sup>3</sup> the United States State Department<sup>4</sup> and non-governmental organizations<sup>5</sup> attest that these violations have escalated in number and intensity during the period since the breakdown in the international peacekeeping efforts and the failure of the Governors Island Accord. As described in the last report of the Civilian Mission, "Haiti

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<sup>3</sup> United Nations General Assembly, The Situation of Democracy and Human Rights In Haiti, Note by the Secretary-General, Addendum (48th Sess. Agenda item 31), (A/48/532/ADD.3, 27 July 1994) at 6 ("Third addendum to the interim report") (hereinafter "Civilian Mission Report"), **Appendix, Volume I: Documentation Item #1**. ("The human rights situation in Port-au-Prince and the surrounding area during the past four months has been characterized by an unprecedented increase in violence and a marked resurgence in human rights violations over last year's totals. At the time of the Mission's deployment in 1993, the most widespread human rights violations were arbitrary arrest, illegal detention, torture... Since its return, however, [in May of 1994] ...the Mission has noted an alarming increase in extrajudicial executions, suspect deaths, abductions, enforced disappearances, and politically motivated rapes.").

<sup>4</sup> United State Department of State, Human Rights In Haiti at 1 (September 13, 1994) (hereinafter "DOS Haiti Report") **Appendix, Volume I: Documentation Item #34**. ("As we approach the third anniversary of the coup against the Aristide government, the human rights situation has worsened. To maintain its rule, the regime has instilled a pervasive climate of fear through widespread assassination and other killings, torture, mutilation, rape and steady harassment. According to the February 7, 1994 report of the UN Special Rapporteur for Haiti, as many as 3,000 Haitian civilians, including many Aristide supporters, have been killed under the Cedras regime. Other reports indicate that at least several hundred more have been killed since."). The State Department report incorporated those of the United States embassy in Port-au-Prince. *See infra*, note 8.

<sup>5</sup> Human Rights Watch, National Coalition for Haitian Refugees, Rape in Haiti: A Weapon of Terror (July 1994) at 4 (hereinafter "HRW/NCHR Report") **Appendix, Volume I: Documentation Item # 6** ("Since the unraveling of the Governors Island Accord, unchecked repression has escalated....").

is experiencing an unprecedented human rights crisis."<sup>6</sup> The incidence of the most severe abuses--not just arbitrary arrests and detentions, but extrajudicial executions, suspect deaths, abductions, and enforced disappearances--has risen enormously.<sup>7</sup> According to numerous sources, one of the principal characteristics of this era of more intense and atrocious repression is the growing number of "politically motivated rape[s]"<sup>8</sup> of women and girls.

As this Commission itself has observed, in Haiti "[s]exual abuse is used as an instrument of repression and political persecution."<sup>9</sup> The perpetrators are members of the military and police forces, their armed civilian auxiliaries and paramilitary groups, as well as others acting under cover of impunity.<sup>10</sup> Most recently, the United States embassy in Port-au-Prince<sup>11</sup> and

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<sup>6</sup> Civilian Mission Report, *supra*, note 3 at 19.

<sup>7</sup> As the UN/OAS Civilian Mission Report emphasizes, since the Mission had limited access particularly outside Port-au-Prince, the incidents it reports almost certainly underestimate the extent of the violations. Civilian Mission Report, *supra*, note 3 at 5 and 12. The Cedras regime expelled the Civilian Mission in July of 1994. The State Department acknowledges that while it has stepped up its human rights monitoring efforts since the departure of the Mission, of necessity its investigations have been even more limited than those of the Civilian Mission. DOS Haiti Report, *supra*, note 4 at 2.

<sup>8</sup> Civilian Mission Report, *supra*, note 3 at 6. In March of 1994, the United States embassy "reported a general increase in violence, including rape, against the families of the regime's critics." *Id.* at 6. In 1993 as well, the State Department had reported on the use of rape as had other agencies of the United States government. United States Department of State, Country Reports on Human Rights Practices for 1993, (January 31, 1994) (rape and violence against women are common but not reported or prosecuted). See also, John Period, Acting Director, Immigration and Naturalization Service ("INS") Office of International Affairs, Memorandum to INS Asylum and Refugee Divisions, Re: Considerations When Adjudicating Haitian Refugee/Asylee Applications (March 9, 1993) Appendix, Volume I: Documentation Item #44 (lists leaders and members of women's groups as targets of repression and violence); Grover J. Rees, *To the Rescue?*, The New York Times (May 24, 1994) at 19, Col. 2 Appendix, Volume I: Documentation Item #41 (former General Counsel of United States INS condemns mass rape of women and the abduction of children in Haiti as a "terror tactic").

<sup>9</sup> OAS/Inter-American Commission on Human Rights/CIDH Press Release, No.11/94, (May 20, 1994) at 4 Appendix, Volume I: Documentation Item #2.

<sup>10</sup> For examples, see *infra*, notes 27-33 and accompanying text.

President Clinton<sup>12</sup> have confirmed reports of the widespread use of rape. While rape has been employed as a political tool since the coup, its use has increased dramatically since the end of 1993, taking on "proportions unparalleled in the history of Haiti."<sup>13</sup>

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<sup>11</sup> See *supra*, note 4.

<sup>12</sup> *Showdown in Haiti, In the Words of the President: The Reasons Why the US May Invade Haiti*, The New York Times (September 16, 1994) at 10, Col. 1 (text of President Clinton's speech to the nation) **Appendix, Volume I: Documentation Item #33**.

<sup>13</sup> Republique d'Haiti, Ministere des Affaires Etrangeres, Press Release, (May 25, 1994) at 1 **Appendix, Volume I: Documentation Item #40**; See, Civilian Mission Report, *supra*, note 3 at 9-10 ("During the entire period of its presence in Haiti in 1993, the Mission had recorded very little information regarding sexual abuse in general and, in particular, those committed by agents of the State....Since their return, between 31 January and 30 June, the observers have received information concerning 76 cases of rape perpetrated in the capital city and the surrounding area."). See also, American Immigration Lawyers Association, The AILA Human Rights Delegation Report on Haiti (March 1993) at 13 **Appendix, Volume I: Documentation Item #15** (describing reports of rapes by thugs in close association with military as "a new form of repression"); Haiti: Resistance and Democracy Informational Bulletin, Vol.2, #36, (May 10-20, 1994) **Appendix, Volume I: Documentation Item #8** (reporting that rape of a political nature is a tool of repression used by the military and armed civilians since the coup d'etat, but during recent months, the number of such rapes has reached an alarming level.); New England Observers' Delegation, Courage Washing Over Misery: Haitians Told Us Their Stories (July 21, 1994) at 2 (hereinafter "NEOD Report") **Appendix, Volume I: Documentation Item #7** ("Sexual attacks against women... have vastly increased since late 1993 when the population expected Aristide to return."); Harold Maass, *Violence Against Women Increasing in Haiti, Rights Activists Say Rape Being Used as a Means of Repression*, The Dallas Morning News (April 24, 1994) at 21 A **Appendix, Volume I: Documentation Item #72** ("Human rights experts say rape has become a common tool of political terror.... Open and visible violence against women has been apparent for months.... 'They are raping women systematically.'"); Andrea Foster, *Dodd Offers Measure to get Tough with Haiti*, States News Service (April 19, 1994) **Appendix, Volume I: Documentation Item #73** (Senator Dodd, condemning military leaders for raping women, kidnapping children and other abuses, notes that the atrocities today "are far worse than any of the abuses of the Duvalier family dictatorship"); *Militares Utilizan como Arma Represiva la Violacion Sexual* (translation: "Military Uses Sexual Violence as a Repressive Force"), El Diario/La Prensa (April 14, 1994) **Appendix, Volume I: Documentation Item #74** (Organizations that defend human rights state that sexual violence, which used to be rare in Haiti, has turned into a common instrument for political terrorism.); cf. DOS Haiti Report, *supra*, note 4 at 3 ("The present situation reflects a degree of terror comparable to that of the Duvalier regimes."); Americas Watch, National Coalition for Haitian Refugees, Physicians for Human Rights, Return to the Darkest Days: Human Rights in Haiti Since the Coup (December 30, 1991) at 8, 11, and 12 **Appendix, Volume I: Documentation Item #24** (Under Duvalier, "rape was one of the common methods of governance used by section chiefs to maintain control of the population."); *supra*, note 8.

Of course, the prevalence of rape prior to 1994 is unknown. Rape may have been

In these proceedings, witnesses and attorneys are presenting evidence of rape and other forms of sexual violence against Haitian women used as means of repression, intimidation and terror. In addition to reports of the OAS/UN Civilian Mission,<sup>14</sup> the use of sexual violence is documented by non-governmental organizations such as Human Rights Watch and the National Coalition for Haitian Refugees,<sup>15</sup> the New England Observers Delegation to Haiti,<sup>16</sup> accounts of anthropologists, newspaper reporters and others who have travelled to Haiti, and of individual Haitian women who have escaped or have attempted to escape and obtain refuge in the United States. Already presented to the Commission were hundreds of pages of documentation specifically related to the use of rape and other sexual violence as tools of political repression, and the accounts of over 150 cases of politically-motivated rape.<sup>17</sup>

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underreported by victims or not adequately investigated by human rights monitors. Because of the specific obstacles to investigating and reporting sexual abuse, it is extremely difficult to assess the true incidence of rape and sexual violence at any particular time. As noted, however, evidence currently available indicates that rape and related sexual violence, as well as other human rights abuses by the military, police and paramilitary forces, increased dramatically after the failure of the Governors Island Accord.

<sup>14</sup> Civilian Mission Report, *supra*, note 3.

<sup>15</sup> HRW/NCHR Report, *supra*, note 5.

<sup>16</sup> NEOD Report, *supra*, note 13.

<sup>17</sup> Appendix, Volume I contains documentation of reports and statements of the OAS/UN Civilian Mission, non-governmental organizations, statements of present and former government officials and news reports. The Civilian Mission reported on 76 cases of rape (*see infra*, note 23). There are numerous other cases described in the documentation submitted with this communication. Appendix, Volume II contains affidavits, statements and testimony taken directly from victims or their attorneys or other advisors, doctors and human rights workers. These statements document the rapes of 90 individuals and knowledge by the affiants of an additional 71 politically-motivated rapes. In many of the documented cases, a group of attackers raped the woman or she was raped on more than one occasion. In addition to rape, these statements document numerous instances of attempted rape and related violence against women. Appendix, Volume III contains additional items received since the hearing on September 26, 1994. It contains two compilations of testimonies and reports gathered and published in Enfofanm, a women's journal produced in Haiti during the terror. These

As described below, women of all ages and conditions--from pregnant women to girls as young as five--have been among the victims of politically-motivated rape. As the report of the Civilian Mission starkly concludes, "[i]t is becoming increasingly clear that the aim of the repression is to destroy the pro-democracy movement, and the associated working class and peasant sector."<sup>18</sup> Women who played a critical role in the building of democratic institutions in Haiti have been targeted because of these political activities. Many of Haiti's women's organizations have been attacked and some have been destroyed.<sup>19</sup> Among pro-democracy organizations, women's groups are the more vulnerable because of the position of women in Haitian society which limits their ability to organize.<sup>20</sup> Women also have been targeted because of their personal and family associations, retaliated against because of the political beliefs and the activities of a husband, child, parent, boyfriend or other relative. State-sponsored and deliberately tolerated agents have attacked women simply because they live in neighborhoods that are known to support President Aristide.

Importantly, although the evidence submitted with this Communication largely focuses on sexual violence, women have been subjected to other types of violence and related human

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reports were written by the National and International Center for Documentation and Information on Haiti's Women, a Haitian women's non-governmental organization. The first report, September 29, 1991: A Massacre of the People: Several Haitian Women Speak (hereinafter Enfofanm I), indicates that rape was used from the first days of the coup. The second report, Cases of Haitian Women's Rights Violations in 1993 (hereinafter Enfofanm II), contains a month-by-month compilation of brief reports of all types of violence against women including rape and other forms of sexual and reproductive abuse. (Note: this document was received from Haiti with its final pages missing).

At the request of the affiants and for their protection, we have deleted the names and much of the identifying information in the affidavits submitted in Appendix, Volume II.

<sup>18</sup> Civilian Mission Report, *supra*, note 3 at 1.

<sup>19</sup> *See infra*, notes 56-65.

<sup>20</sup> HRW/NCHR Report, *supra*, note 5 at 6.

rights violations, including mutilations, torture, illegal detentions and severe beatings while in state custody.<sup>21</sup> Alerte Belance, who testified before the Commission in these proceedings, is one of these victims. She was beaten, mutilated with a machete on her head, face and neck, and, after her right arm was severed below the elbow, she was left for dead--all in retaliation for her husband's political support for President Aristide.<sup>22</sup>

Many of the attacks on women, and particularly sexual assaults, have taken place in their homes and in front of their children. As the violence has increased and men have disappeared, been killed or gone into hiding, women have remained behind to take care of the children and maintain the existence of their communities. In circumstances where men have blanket license to rape and plunder, women heads of household have become more vulnerable to attack. As the destruction of the democratic movements in Haiti has expanded into a reign of terror, the home and the women in it have become the prey.

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<sup>21</sup> See e.g., Affidavit of Anne Fuller, Case #4 Appendix, Volume II: Affidavits, Statements and Testimony Item #22. (In August of 1994, soldiers arrested Ms. OR, a coordinator of the Movement des Femmes de la Paroisse de Pliche, a woman's organization and affiliate of Caritas, a social service and development organization funded by the Haitian Catholic Church. She was slapped around and made to sleep on a bench and then accused of being "Lavalas" (a term meaning supporter of President Aristide and the democratic movement) and inciting the local women. The commander of the soldiers and leader of Front for the Advancement and Progress of Haiti (FRAPH) (*see infra*, note 29 and accompanying text) ordered her beaten and struck her on the back and buttocks with a rubber whip. Three days later she was whipped 25 times with the braided leather "rigwaz" after she refused to join FRAPH and renounce her organization. When she was finally freed, she had never been brought before a judge and her family had not been permitted to see her.); Affidavit of J.X., Case #4 Appendix, Volume II: Affidavits, Statement and Testimony Item #16 (describing robbing and beating in the home of a woman street vendor by a group of men in civilian clothes with hoods over their heads; uniformed men were posted outside of her house during the attack). Enfofanm II, documents a broad range of violence directed against women, including against their homes, bodies, livelihood, families and children. It also documents the ways in which women are killed or injured and suffer as a consequence of random violence, impoverishment and grieving and caring for others. Enfofanm II, *supra*, note 17.

<sup>22</sup> See, NEOD Report, *supra*, note 13 (Appendix to Report) (full account of Alerte Belance in The Peasant, Vol. 1, No.2 (Summer, 1994)).

B. The Nature of the Attack on Women

1. The Responsibility of the Illegal Regime

In May, 1994, the International Civilian Mission established by the United Nations and the Organization of American States to examine the situation of democracy and human rights in Haiti reported on politically-motivated rape in Port-au-Prince and the provinces. Between January and June of 1994, the Mission received reports of seventy-six cases of rape, fifty-four of which involved female activists or close relatives of activists.<sup>23</sup> These reports have been confirmed by this Commission,<sup>24</sup> other inter-governmental bodies, the United States State Department<sup>25</sup> and numerous non-governmental organizations.<sup>26</sup>

The responsibility for these attacks lies with the military and the de facto government.<sup>27</sup> The perpetrators include members of the armed forces, their civilian auxiliaries (known as attaches),<sup>28</sup> members of the Front for the Advancement and Progress of Haiti (FRAPH),<sup>29</sup> the

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<sup>23</sup> Civilian Mission Report, *supra*, note 3 at 10.

<sup>24</sup> *See supra*, note 9.

<sup>25</sup> *See supra*, note 4.

<sup>26</sup> *See supra*, notes 5, 15-17 and accompanying text.

<sup>27</sup> The Civilian Mission reports that "[t]he persons mainly responsible for the violations of human rights are either members of the Haitian armed forces or groups of armed civilians, apparently well-organized and equipped...Some of these armed civilians are auxiliaries of the military, and act on their orders. Others are gangs of criminals known as 'zenglendos,' which sow terror at nightfall in the working-class districts. They operate for the most part with absolute impunity, under the cover and with the complicity of members of the armed forces. The participation of members of the armed forces of Haiti in zenglendos gangs has been proved in some cases." Civilian Mission Report, *supra*, note 3 at 6.

<sup>28</sup> "Attaches are civilians who are employed, armed and directed by the military and police. Attaches are omnipresent and abuse their enormous discretionary powers through murder, torture, arrests, beatings, extortion, imprisonment, and rape." HRW/NCHR Report, *supra*, note 5 at 11. According to William O'Neill, former legal director of the UN/OAS Civilian Mission in Haiti,

pro-military, anti-democratic military party, and zenglendos, "armed civilians who terrorize the inhabitants of the working-class districts considered most favourable to the return of President Aristide."<sup>30</sup>

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"although not a uniform practice, attaches are paid and carry an identification card. Some behavior is very common. They operate with absolute impunity or apparent acquiescence on the part of the military; they commit crimes in the presence of the military and police; they are heavily armed; and they act with an air of authority." *Id.* There are many examples of rapes by attaches. See e.g., National Coalition for Haitian Refugees, Memorandum by Anne Fuller, Associate Director, Director Haiti Program (April 21, 1994) Appendix, Volume I: Documentation Item #29 (attaches threatened women with rape and death which stopped after they noticed she was menstruating; they left her naked and tied up in front of her house); Kathie Klarreich, Haitian Army, Rightist Henchmen Linked to Epidemic of Rapes (March 2, 1994) Appendix, Volume I: Documentation Item #81 (attaches raped 9-year old girl. In addition to politically-active women, women who live in homes of men targeted by the attaches are also routinely victimized while the men are not at home.); Haiti: Resistance and Democracy Informational Bulletin, Vol. 2, No. 3 (September 24, 1993) at 5 Appendix, Volume I: Documentation Item #91 (attaches attacked people at a church in Petion-Ville and reportedly raped 5-year old children); see *infra*, note 37.

<sup>29</sup> The Front revolutionnaire pour l'avancement et le progres Haitien. It was recently renamed the Front Revolutionnaire Arme. FRAPH is now a "new protagonist" added to the "[t]raditional agents of repression." Civilian Mission Report, *supra*, note 3 at 6. FRAPH was created in 1993 by members of the armed forces and other opponents of President Aristide, in order to prevent the restoration of democracy. "The massive presence within it of attaches, former members of the armed forces, former tonton macoutes and armed civilians makes FRAPH a paramilitary force. It [sic] members often engage in joint operations with members of the army against working-class sectors. Unlike other organizations, FRAPH extensively exercises the rights to freedom of association, expression and assembly." *Id.* For examples of rape by FRAPH members, see, Haitian Platform for the Human Rights Organizations, Testimony of a Woman Raped by an Armed Civilian (March 24, 1994) Appendix, Volume II: Affidavits, Statements and Testimony Item #38; Affidavit of J.S., Case #1 Appendix, Volume II: Affidavits, Statements and Testimony Item #26; Affidavit of L.T. Appendix, Volume II: Affidavits, Statements and Testimony Item #27; Affidavit of L.T. Appendix, Volume II: Affidavits, Statements and Testimony Item #28; Anna Hamilton Phelan, The Latest Political Weapon in Haiti: Military Rapes of Women and Girls, Los Angeles Times (June 5, 1994) at Part M, 4 Appendix, Volume I: Documentation Item #62.

<sup>30</sup> Civilian Mission Report, *supra*, note 3 at 10 and 6; UN General Assembly, International Civilian Mission Report on the Situation of Democracy and Human Rights in Haiti, (October 25, 1993) A/25/532 at 12 Appendix, Volume I: Documentation Item #5 ("The term 'zenglendos' is used to refer to members of armed criminal groups, usually operating at night and particularly in the slums and working-class districts of Port-au-Prince. Some of this violence may be assumed to be purely criminal, without political motivation. However, it is widely believed in Haiti that even zenglendos operate under the cover, or with the express tacit consent of the police, and that their operation, while

The United States State Department has placed the responsibility squarely with the individual *de facto* rulers. "The increasing repression and terrorism in Haiti is perpetrated at various levels by military, police and civilian groups reporting to the Cedras regime.... The regime directs, encourages or permits these organizations and individuals to violate human rights with impunity...because it suits their purposes"<sup>31</sup> for the maintenance of their rule. The State Department Report notes that the regime's failure to investigate these abuses "leads us to assume that they...took place with the approval or outright participation of the military and their allies."<sup>32</sup> The State Department lists among its "litany of human rights abuses" rapes by uniformed soldiers, police and attaches, and reports from the United States embassy of "a general increase in violence, including rape, against the families of the regime's critics."<sup>33</sup> There certainly have been instances of rape and other violence committed by and at the explicit orders of the highest authorities of the Haitian illegal regime. In one reported instance, Police Chief Michel Francois himself beat a prominent young woman activist unconscious and then directed

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involving armed robberies, may also be intended to intimidate the population of localities most opposed to the post coup authorities and committed to the return of President Aristide."); *id.* at 14-15; *supra*, note 27.

<sup>31</sup> DOS Haiti Report, *supra*, note 4 at 1, 2.

<sup>32</sup> *Id.* at 2. The HRW/NCHR Report further observes that "the military authorities have never publicly denounced these practices nor fully disciplined those state agents known to have engaged in them. The military authorities' use and tolerance of rape fuels the reluctance of rape victims to report such abuse." HRW/NCHR Report, *supra*, note 5 at 3. It concludes that "[a]lthough the evidence does not suggest that Haitian military leaders are actively promoting an explicit policy of rape, they are presiding over a campaign of systematic violations of human rights that clearly includes rape." *Id.* at 4.

<sup>33</sup> *Id.* at 5,6.

his men to "serve her." These men then beat her severely and all raped her.<sup>34</sup>

## 2. Rape and Other Sexual Violence

A July 1994 joint report of Human Rights Watch and the National Coalition for Haitian Refugees ("HRW/NCHR Report")<sup>35</sup> described a "pattern of rape by police and attaches acting with impunity"<sup>36</sup> and documented numerous cases of rape and other forms of sexual violence and abuse committed by state and state-supported actors.<sup>37</sup> In a May 1994 communique, the Haitian foreign ministry found that "for the past couple of months alone, there have been over a hundred reported cases of rape by the military and their offspring."<sup>38</sup> A young woman from the Haitian town of Borge described a developing reign of terror in which women are being attacked regularly. "If [soldiers] find any young girl, they rape her."<sup>39</sup> Women's groups have

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<sup>34</sup> NEOD Report, *supra*, note 13 at Appendix 24-27. We have submitted to the Commission the confidential medical report of her doctor (submission at hearing, September 26, 1994). For other examples of gang-rapes, *see infra*, note 53.

<sup>35</sup> HRW/NCHR Report, *supra*, note 5.

<sup>36</sup> *Id.* at 2. The report also notes that in Haiti there is no meaningful distinction between the military and the police and that the military work closely with their civilian allies. *Id.* at 8. The report states that "[u]niformed military personnel and their civilian allies have threatened and attacked women's organizations for their work in defense of women's rights and have subjected women to sex-specific abuse...Rape also is a part of apparently random violence committed by bands of zenglendos. Social unrest, which is both fostered and exploited by the military authorities in order to repress opposition to their rule, has contributed to increased levels of seemingly random violence." *Id.* at 2. One doctor reported that he believes that violence attributed to zenglendos--or armed thugs--"includes military and attaches." *Id.*

<sup>37</sup> Of the rapes reported by Human Rights Watch and the National Coalition for Haitian Refugees, the greatest number were committed by attaches, followed by those committed by police and soldiers, and finally those committed by zenglendos. *Id.* at 7.

<sup>38</sup> Republique d'Haiti Ministere des Affaires Etrangeres, Press Release (May 25, 1994) Appendix, Volume I: Documentation Item #40.

<sup>39</sup> Country Held Hostage, Haiti Info, Vol. 2, No. 6, (November 14, 1993) at 1-2 Appendix, Volume I: Documentation Item #88.

counted as many as eighteen rapes in a single day.<sup>40</sup> UN/OAS observers found that "[r]ape while in detention continued to be the rule rather than exception."<sup>41</sup> Other Haitian and international women's organizations such as Kay Fanm, MADRE and Lambi Fund, as well as numerous advocates and individuals, confirm these findings.<sup>42</sup>

The sexual abuse of Haitian women takes many forms, including not only rape but other forms of sexual tortures such as severe beatings on the breasts and abdomen.<sup>43</sup> In a number of cases, pregnant women were targeted with the specific intent to cause miscarriage and mutilation or to impair the woman's ability to bear children.<sup>44</sup> Kay Fanm has reported that a number of

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<sup>40</sup> Harold Maass, *supra*, note 13 at 12A. As noted, the HRW/NCHR Report cites a Port-au-Prince gynecologist with a private practice who stated that he had seen "one or two cases of rape every month since the coup d'etat." HRW/NCHR Report, *supra*, note 5 at 2.

<sup>41</sup> Human Rights Watch/Americas, National Coalition for Haitian Refugees, Terror Prevails in Haiti: Human Rights Violations and Failed Diplomacy April 1994 at 3, 5, 30 Appendix, Volume I: Documentation Item #10.

<sup>42</sup> See e.g., Various Forms of Violence to Women, Report prepared by Kay Fanm and presented to the Inter-American Commission on Human Rights (May 10-20, 1994) Appendix to Haiti: Resistance and Democracy Information Bulletin (hereinafter "Kay Fanm Report") Appendix, Volume I: Documentation Item #8; Lambi Fund, Report on Sexual Abuses Against Haitian Women May 15-20, 1994 (hereinafter "Lambi Fund Report") Appendix, Volume II: Affidavits, Statements and Testimony Item #2; Anna Hamilton Phelan, *supra*, note 29 (describing "alarming" jump in incidence of rape of women and girls that have as the specific purpose "political repression"); Statement of Vivian Stromberg I Appendix, Volume II: Affidavits, Statements and Testimony Item #30

<sup>43</sup> HRW/NCHR Report, *supra*, note 5 at 6; Enfofanm II, *supra* note 17 at 9-12.

<sup>44</sup> *In re---* (Krome) (BIA May 25, 1993) (unpublished decision) Appendix, Volume II: Affidavits, Statements and Testimony Item #39 (27-year old Haitian woman activist in pro-Aristide church gang-raped by masked men denouncing her as Aristide supporter; rendered unable to have children as a result). Members of a Haitian women's rights group reported to a human rights monitor from Human Rights Watch an "assault in which the woman who was beaten by a group of soldiers was told, 'We'll beat you until you can't have kids, until you can't have kids like yourself (militant).'" HRW/NCHR Report, *supra*, note 5 at 7. See also, Kay Fanm Report, *supra*, note 42 at 2 (reporting that a pregnant woman who was abducted during a demonstration "heard the soldier who was taking her to prison say while mistreating her, 'I'll keep beating you until you give birth by the nostrils'"); Tom Squitieri, USA Today, July 12, 1994 Appendix, Volume I: Documentation Item #48 (documenting a July, 1993 incident reported by UN human rights monitor of woman arrested by police

women have been killed by soldiers or attaches who shot or stabbed them in their vaginas.<sup>45</sup> Pregnant women, women who have just given birth,<sup>46</sup> and girls as young as five years old have been among the rape victims.<sup>47</sup> Many times the rape occurred in front of children or other family members, thus serving to terrorize not only the woman but the entire family.<sup>48</sup> In some cases a woman was forced to witness the rape or murder of her child or other family member

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and attaches because of her activities as a monitor during the 1990 election; while detained, she was severely beaten and suffered a miscarriage); Affidavit of Marie Jean-Baptiste, Case #2 **Appendix, Volume II: Affidavits, Statements and Testimony Item #17** (documenting case of women who, while six months pregnant, was beaten and kicked by soldiers in her home until she suffered a miscarriage; her two-year-old son, who clung to her legs during the attack, was killed); Affidavit of J.X., Case #1, *supra*, note 21 (four-month pregnant woman, trying to secure release of relatives, beaten so badly she miscarried); Enfofanm II, *supra* note 17 at 10, 12.

<sup>45</sup> See, Kay Fanm Report, *supra*, note 42 at 2 ("Some soldiers killed a number of women by shooting bullets directly into their vaginas. A woman in Jacmel was stabbed in her vagina by her attache husband.").

<sup>46</sup> See *id.* ("[A] woman who had given birth and who had a baby in her arms, was forced to witness the rape of her daughter, then she was raped herself, despite episiotomy sutures. She had to return to the hospital for treatment of the physical trauma to her vagina."). There have been numerous cases of pregnant women who have suffered miscarriages when beaten on the lower abdomen. *Id.*

<sup>47</sup> See, Affidavit of T.L. **Appendix, Volume II: Affidavits, Statements and Testimonies Item #20** (5-year old child of active Aristide supporter raped and husband killed when she was out of the house); Affidavit of Vivian Stromberg, *supra*, note 42. (Executive Director of Madre Inc. reports on her visit to Haiti and interviews with 31 women who had been raped in retaliation for political activities and whose ages varied between 15 and the late 60s); Americas Watch, Silencing a People: The Destruction of Civil Society in Haiti (February 1993) (hereinafter "AW Report: Silencing a People") at 33-35 **Appendix, Volume I: Documentation Item #16** (reporting on incident in which an army lieutenant, failing to find two young men who had posted leaflets calling for the ouster of General Cedras, beat and raped their 12-year old sister); Amnesty International, The Human Rights Tragedy: Human Rights Violations Since the Coup (January 1992) at 28-30 (hereinafter "AI Report: The Human Rights Tragedy") **Appendix, Volume I: Documentation Item #23** (In immediate aftermath of coup, members of the military raped several young women including a 14-year old).

<sup>48</sup> See e.g., Lisa Hamm, Rape Used by Army as Weapon, Stories Say Woman Reports Attack By Soldier At Night; Husband Taken Away, Denver Publishing Company (July 30, 1994) **Appendix, Volume I: Documentation Item #46** (documenting case of Jasmine Pierre who was gang-raped in front of her three children during a raid in which soldiers were looking for her husband); Affidavit of J.X., Case #2, *supra*, note 21 (when she refused to denounce Aristide, uniformed armed men raped and shot woman twice in front of her 11-year old daughter).

in addition to being raped herself.<sup>49</sup> In one reported case, a fifteen year old boy was forced to rape his mother.<sup>50</sup> There have been instances of vaginal, oral<sup>51</sup> and anal rape.<sup>52</sup> In many cases, several men in succession "gang-raped" the women.<sup>53</sup> The injuries sustained from these violations, both physical and psychological, can be of the most severe kind.<sup>54</sup> For example, the

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<sup>49</sup> See e.g., Affidavit of Dawn McCormick, Case of Ms. D **Appendix, Volume II: Affidavits, Statements and Testimony Item #29** (Aristide supporter raped by 4 or 5 men who then raped 13-year old daughter, while husband held at gunpoint); See also, Affidavit of T.L., *supra*, note 46 (killing of husband and raping of daughter); See, Kay Fann Report, *supra*, note 42 (woman raped right after giving birth).

<sup>50</sup> Mary Healy, who interviewed the survivor of this incident provides the following account:

Then some men started to beat Marie's son. They repeatedly kicked and punched him and also hit him with a gun. They ordered him to rape his mother in front of them or they would kill him. When the son hesitated, the men started to beat him again. They also put a gun up to his head. The son tried to pretend to rape his mother, but the men hit him and again pointed the gun at him. Finally, Marie begged her son to do what he was told to save his life. She did this because she had heard of a similar incident involving another family where a son who refused to rape his mother was killed. It was because of this other murder, that Marie genuinely feared for her son's life. He followed his mother's direction while the men continued to keep a gun pointed at them. Marie's son was forced to rape her in full view of her daughter. After the son was forced to rape his mother some of the men restrained him and three or four of the men gang raped Marie. At the same time and in the same room, three or four other men gang raped Marie's daughter. The men then left.

Statements of Mary Healy (I), *supra*, note 2.

<sup>51</sup> Affidavit of Dawn McCormick, Cases of Ms. F and Ms. D, *supra*, note 49 (vaginal gang-rape and oral rape).

<sup>52</sup> HRW/NCHR Report, *supra*, note 5 at 3.

<sup>53</sup> Civilian Mission Report, *supra*, note 3 at 10. (reporting on 25 cases of women raped by several men in succession); Affidavit of Dawn McCormick, Case of Ms. F, *supra*, note 49; Statement of Vivian Stromberg (II) Appendix, Volume II: Affidavits, Statements and Testimony Item #31, Cases of Elise and Rose; Affidavit of Anne Fuller, Cases of R.M.C and M.L. & B.L., *supra*, note 21.

<sup>54</sup> See *supra*, notes 44 and 46 and accompanying text; *infra*, note 55. See also, note 34, *supra*, and accompanying text, (confidential medical report of doctor, submitted to Commission). Although not the victim of sexual violence, Alerte Belance, a witness before the Commission, suffered extraordinary injuries, including cuts all over her body, the severing of her ear and tongue, and the loss of her hand. NEOD Report, *supra*, note 13; *infra*, notes 75, 96 and 97.

HRW/NCHR Report describes a case of a woman who died as a result of vaginal hemorrhaging following a rape.<sup>55</sup>

C. Purposes of Attacks

1. Retaliation and Retribution for Political Activities

State-sponsored actors--or actors deliberately tolerated by the state--have inflicted these abuses in order to punish women for their own political activities or to intimidate them from further political action. The Civilian Mission reported that two-thirds of the rapes of women were directed at activists, a significant measure of the political nature of these violations.<sup>56</sup> The number of attacks on politically-active women who oppose the military regime was reportedly "soaring" in March of 1994. Some women's groups have reported "a systematic program of political rape against women connected with Aristide's movement."<sup>57</sup>

After the fall of Jean Claude Duvalier in 1986, many Haitian women formed and joined grassroots organizations to improve the living and working conditions of Haitian women. Since the coup, these organizations have been crushed, and women have been targeted for their defense

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<sup>55</sup> HRW/NCHR Report, *supra*, note 5 at 13; Haiti: Resistance and Democracy Bulletin #170, (December 17, 1992) Appendix, Volume I: Documentation Item #100 (soldier attacked woman cutting her vagina; she later died of the cuts and the soldier boasted in a Jacmel court that he was untouchable and responsible for killing or injuring a total of fourteen victims).

<sup>56</sup> Civilian Mission Report, *supra*, note 3 at 19. For some examples, see Affidavit of L.T., Item #27, *supra*, note 29; Affidavit of L.T., Item #28, *supra*, note 29 (FRAPH members gang rape two women members of a neighborhood committee and human rights organization); Statement of Vivian Stromberg (I), *supra*, note 42 and Statement of Vivian Stromberg (II), *supra*, note 53 (accounts of rapes and gang-rapes of politically active women).

<sup>57</sup> Kathie Klarreich, *supra*, note 28; The Horrors Haitian Women Face, The Plain Dealer (March 29, 1994) Appendix, Volume I: Documentation Item #77 (a woman who was a member of a grassroots women's organization was raped and killed and her body was mutilated as a "'lesson' for others who might want to join the grass-roots movement"); Ed Vulliamy, Haiti's Underground Fights On, The Observer (June 26, 1994) at 15 Appendix, Volume I: Documentation Item #54.

of women's rights through participation in women's organizations as well as for their association with other sectors of the pro-democracy movement.<sup>58</sup> This targeting of activist women serves as a barometer of the politically-motivated nature of the current violence in Haiti. Women's rights activists reported to Human Rights Watch and National Coalition of Haitian Refugees specific threats and actions against their organizations, including the burning of one office and beatings, rapes and sexual threats against individual members.<sup>59</sup> Women who have been illegally arrested have been forced to have sexual intercourse with their captors in exchange for their release.<sup>60</sup> The children of women activists also have been targeted--beaten or raped--as

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<sup>58</sup> Diego Ribadeniera, *In Haiti's Poorest Areas, Women Tell of Rape by Armed Men* (August 29, 1993) Appendix, Volume I: Documentation Item #92 at 6. Women's organizations have suffered from similar repression to that directed at pro-democracy groups more generally. Women's groups have experienced a sharp decrease in membership since the coup, and "mobilization around women's issues has decreased dramatically." HRW/NCHR Report, supra, note 5 at 6. AW Report: Silencing a People, supra, note 47 at 47 ("Most groups advocating equal rights or social justice for women have been stifled since the September coup."); Amnesty International, Haiti: Human Rights Held Ransom (August 1992) at 17 Appendix, Volume I: Documentation Item #19 (organizer of women's group warned not to resume work and group has been unable to continue its work); AI Report: The Human Rights Tragedy, supra, note 47 at 7-11 (women's groups among those popular organizations that "have been particularly targeted for repression by the security forces and their civilian counterparts," and whose work has been "virtually paralyzed since the coup;" members of a women's group, 'Kay Fanm,' arrested in the capital; leader of a women's section of a human rights center arrested during meeting of university students); Lawyers Committee for Human Rights, Summary of the Human Rights Situation in Haiti (December 6, 1991) Appendix, Volume I: Documentation Item #25 (systematic persecution of women's organizations, meetings forbidden and members subject to arbitrary arrest and detention).

<sup>59</sup> HRW/NCHR Report, supra, note 5 at 6. "Women's rights activists.. report specific incidents in which their members or organizations had been targeted. The head of one Haitian women's rights organization reported that her house was ransacked, and that, in September 1993, she received a late-night telephone call, in perfect French, from a man identifying himself as being aligned with the military authorities. He threatened to rape her if she continued her work on behalf of women. The headquarters of another Haitian women's rights group was burned down in the early morning hours of December 13, 1993. Although their office was one of several in a building, it was the only office completely destroyed by the fire." (citations omitted).

<sup>60</sup> Kay Fanm Report, supra, note 42 at 1.

a way of terrorizing their mothers.<sup>61</sup>

Some examples of these kinds of attacks are described by Anna Hamilton Phelan from Artists for Democracy in Haiti and Catherine Maternowska, an anthropologist with ten years of experience working with Haitian women in reproductive health, who travelled to Haiti between May 15, and May 20, 1994. They interviewed a number of women who offered testimony documenting continuing abuses against Haitian women, including punishment inflicted in direct retaliation for their political activities.<sup>62</sup> For example, one woman interviewed was active in a women's economic cooperative, considered by the military to be a political organization simply because the women wanted to improve their general living and economic conditions. In February, 1994, armed members of FRAPH broke into their complex. They tied her up and forced her to watch them rape her thirteen-year old child. The FRAPH members forced another woman from the cooperative to watch as they raped her twelve-year old cousin.<sup>63</sup> "In Martissant, a neighborhood of Port-au-Prince, among a group of two hundred politically active women, forty women have been raped since 1993. Some of these women have since tested HIV-

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<sup>61</sup> Statement of Mary Healy I, supra, note 2 (describing case of activist woman whose daughter was raped and son forced to rape her); Statement of Mary Healy II Appendix, Volume II: Affidavits, Statements and Testimony Item #20 (description of case of masked men in military uniforms breaking into home and beating two sons and elderly father of activist woman; daughter taken out of home and raped).

<sup>62</sup> Statement of Catherine Maternowska and attachment (Lambi Fund Report), supra, note 42; Affidavit of Anna Hamilton Phalen Appendix, Volume II: Affidavits, Statements and Testimony Item #13. A copy of a videotape of some of these interviews accompanies this Communication.

<sup>63</sup> Lambi Fund Report, supra, note 42; see also, Affidavit of Anne Fuller, Case of J.P. and W.J., supra, note 21 (member of women's group affiliated with FNCD [the Front National pour le Changement Democratie, President Aristide's party] raped, beaten and robbed and her politically-active husband disappeared).

positive."<sup>64</sup>

A woman's membership in a popular organization or involvement in any activity which serves to improve the local community has been viewed as an expression of a political opinion in support of President Aristide and brutally suppressed. This includes activity as simple as cleaning one's street.<sup>65</sup>

2. Retaliation and Retribution for Political Activities of Family Members including Male Relatives

Haitian women also have been targeted because of the activities of their husbands, fathers, boyfriends or other family members.<sup>66</sup> In some cases, they have been targeted as members of a family collectively labelled as "Lavalas,"<sup>67</sup> or "Lavalassiens" (sympathizers of President Aristide) because individuals in the family were members of community or political organizations.<sup>68</sup> The military, attaches or other perpetrators have ransacked the family's home, taking their belongings and beating or arresting family members. In many instances, the

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<sup>64</sup> Lambi Fund Report, *supra*, note 42.

<sup>65</sup> See, Mike Levy, Amnesty International Country Group Coordinator in Haiti, Memorandum to John D. Evans, Director, INS Resource Information Center (January 9, 1992) at 4 (quoted in Statement of Mary Healy (I), *supra*, note 2 ("One of the most aggressive, non-violent acts in the post-Duvalier period was to take responsibility for and pride in one's own street...Even now, cleaning streets, and anything else which improves the daily life of the people which is accomplished without government participation is seen in Haiti as a very definite political act as threatening as a demonstration.")).

<sup>66</sup> Civilian Mission Report, *supra*, note 5 at 14; Haiti: Resistance and Democracy Bulletin #173, (January 11, 1993) at 1-2 Appendix, Volume I: Documentation Item #99 (soldiers arrested wife and brothers of activist who went into hiding shortly after coup; family subjected to "continued persecution and threats by the military" in apparent retaliation for his political activities).

<sup>67</sup> A term used to describe members of Aristide's party, the FNCD (*see supra*, note 63) or persons considered simply to be supporters of Aristide.

<sup>68</sup> This label may attach even if persons have no political affiliation. See, Civilian Mission Report, *supra*, note 5 at 19.

perpetrators have beaten or arrested the husband and raped the wife or daughter.<sup>69</sup> A non-governmental human rights observer described one such instance:

On August 6, 1992, at approximately 7:00 pm, ten soldiers and police entered [the] house [of S.M.] and starting breaking things and hitting her. The first person who entered was wearing blue; he was a policeman. The soldiers and police called her family "Lavalas" because they were members of the FNDC [Front National pour le Changement Democratie, President's Aristide's party].

The policeman beat and kicked S.M. He then dragged her into a corner and raped her. He threatened to kill her children if she resisted.

Several minutes later, S.M.'s husband arrived. He was immediately arrested and taken away in a blue Toyota pickup. According to the S.M., her husband was taken to the local police headquarters known as the Cafeteria where he was beaten savagely all over his body...<sup>70</sup>

In many cases, the retaliation for activities of family members has included extremely violent, but not explicitly sexual, assaults.<sup>71</sup>

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<sup>69</sup> See e.g., Affidavit of J.X., Case #1, *supra*, note 21 (describing rape of woman by group of men who took away her husband, who had attended Aristide demonstration); AW Report: Silencing a People, *supra*, note 47 (failing to find two young men who had posted leaflets calling for ouster of General Cedras, an army lieutenant beat and raped their 12-year old sister); Amnesty International, Urgent Action, Haiti, Patrick (Eric) Morisseau, teacher, Clair Edouard (female) (June 2, 1992) Appendix, Volume I: Documentation Item #19 (after arresting a member of a local neighborhood committee, security forces went to his mother's house where they killed her in front of neighbors).

<sup>70</sup> Statement of Lashawn R. Jefferson, Appendix, Volume II: Affidavits, Statements and Testimony Item #4 at 2.

<sup>71</sup> See, Amnesty International, Urgent Action, Haiti, Further Information on UA 42/94, Fear for Safety/Extrajudicial Execution (March 4, 1994) Appendix, Volume I: Documentation Item #11 (describing beatings of women by armed men searching for or trying to find the whereabouts of their husbands); Amnesty International, Urgent Action, Haiti, Inhabitants of Raboteau terrorized by army patrol - young children and pregnant women among those ill-treated UA 19/94 (January 21, 1994) Appendix, Volume I: Documentation Item #12 (soldiers and attaches search for one man, beat 19 people including women and children and proceeded to terrorize people throughout the town while beating elderly and pregnant women and children); *supra*, note 22 (case of Alerte Belance); AI Report: The Human Rights Tragedy, *supra*, note 47 (describing a number of incidents of arrests of women when husbands or other male relatives--in two cases government ministers--for whom soldiers searched, were not at home).

Because of the widespread repression of anyone believed to be a supporter of President Aristide, many men have been forced to leave their homes and go into hiding.<sup>72</sup> Consequently, women, left to care for their children and other family members, have become the targets of abuse by police, military, attaches or zenglendos seeking the male family members or attempting to terrorize the family. Many of the attacks have taken place in the woman's home. Officers, attaches or FRAPH members have forcibly entered in search of a relative who supported, or whom they believed supported, President Aristide. Upon discovering that the man was not home, the intruders have proceeded to rape and often brutally beat the female relative. These perpetrators have clearly communicated to their victims that the gang-rape was a consequence of the male relative's political beliefs. The Civilian Mission described the typical case:

...(T)he scenario is always the same. Armed men, often military or FRAPH members, burst into the house of a political activist they seek to capture. When he is not there and the family cannot say where he is, the intruders attack his wife, sister, daughter or cousin.<sup>73</sup>

Women refugees who have fled or attempted to flee their country have reported similar incidents of being raped at least in part in retaliation or otherwise as a consequence of their male relatives' activities. The following are only a few examples:<sup>74</sup>

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<sup>72</sup> According to the United States State Department, over 300,000 persons are now in hiding. DOS Haiti Report, *supra*, note 4 at 4.

<sup>73</sup> US/OAS International Civilian Mission in Haiti, Press Release, Ref. CP/94/20, May 19, 1994 Appendix, Volume I: Documentation Item #3. See also, Civilian Mission Report, *supra*, note 3 at 6.

<sup>74</sup> It should be noted that in several of these cases, the women were also politically active. Other examples of women who were raped as punishment for their own activities as well as those of their male relatives include J.P. described in Affidavit of Anne Fuller, Case #1, *supra*, note 21 (woman raped and husband disappeared where she was active in women's organization and he in the peasant organization Mouvement Paysan de Papaye (MPP)); Case of M.L.R., described at *id.* Case #2 (secretary of pro-democracy organization taken away by police and four armed civilians who came to

The half sister of T.S. lived with her husband in a poor pro-Aristide neighborhood of Port-au-Prince. Her husband was a member of Lavalas. They both attended demonstrations in support of Aristide. She worked at a neighborhood polling place on election day. Her husband worked with orphans through an organization started by President Aristide. He fled their home after an incident involving the wife of one of the members of the police force in their neighborhood. Sometime early in 1993, men in blue uniforms came to her house. They searched the house and asked for her husband. She told them that her husband was dead. Later that year, she was at home with her door locked. A number of men began beating on the door. When she did not open the door, they broke it down. They blindfolded her and began to interrogate her about the whereabouts of her husband and asked for money he had collected for his organization. When they could not find any money, they raped her in the presence of her three young children. Three different men raped, cut and beat her. She still suffers the effects of this attack. She has scars from cuts she received at the time and suffers recurring headaches.<sup>75</sup>

F.M. lived with her common law husband, children, two uncles and brother. Although F.M. was not politically active, her common-law husband, uncles and brother were members of a pro-Aristide popular organization. As part of their activities, they were involved in neighborhood cleaning and teaching adult literacy classes in Creole. F.M.'s brother and uncles lived in a part of the house separated from her living quarters. After the coup, a group of soldiers came to the home and took her brother and uncles away. F.M. and her common-law husband and children were in a separate part of the house at the time and had no contact with the soldiers. The evening of the following day, the soldiers returned and asked for her husband. When she told them that she did not know where her husband was, one of the soldiers ripped off her clothes, pushed her to the floor and raped her. Two more soldiers then raped her in turn. She was forced to flee her home when, during the days following the attack, she passed the local army post and was threatened with death by one of the soldiers who had raped her.<sup>76</sup>

K.K. lived in Cite Soleil with her aunt and cousins. She was a supporter of President Aristide and a member of the Ti L'egliz movement, the pro-democracy church movement associated with President Aristide. After President Aristide's election, one of her male cousins founded an organization dedicated to spreading democratic principles among the people of the local community. Two months after the coup, six soldiers came to K.K.'s home demanding to speak to her cousin. When she and her aunt refused to open the door, they pounded on the door, fired shots and eventually kicked the door in. They went through the house, turning over furniture and demanding that K.K.'s cousin turn himself in. The soldiers identified K.K. as the

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her house looking for her husband. Seven months pregnant at the time, she was beaten with fists and nightsticks especially on the backs of her legs and her back. She also was raped repeatedly during her detention, held in jail and fed very little for a month. Shortly after her release, she was arrested again and questioned about her own political activities.)

<sup>75</sup> See, Affidavit of T.S. Appendix, Volume II: Affidavits, Statements and Testimony Item #9.

<sup>76</sup> See, Affidavit of Dawn McCormick, supra, note 49.

cousin of the person they were seeking, threatened to shoot her as a "troublemaker" and told her they would "show her how important she was." She was raped by at least two of the soldiers. She was fifteen years old at the time.<sup>77</sup>

S.R. was a resident of a poor pro-Aristide neighborhood in Port-au-Prince. Her brother was a member of pro-democracy organizations and worked at a polling place in the 1990 election. Shortly after the coup, several members of the military, in uniform and carrying weapons, came to her home asking for her brother. Not finding her brother in the house, they attacked S.R. and her uncle and ransacked their home. One of the soldiers forced her to undress and began to rape her. He was stopped by another soldier who pulled him off of her saying that they did not have time for that and could come back later. S.R. and her uncle immediately fled their home.<sup>78</sup>

### 3. Retaliation and Retribution for Neighborhood and Social Class Association

In some cases, women have been raped simply because they live in a particular neighborhood. The de facto government has targeted poorer neighborhoods, such as Cite Soleil, because the residents of those neighborhoods exhibited strong support for President Aristide. The very fact that a woman lives in such a neighborhood has marked her as an enemy of the government justifying the punishment of rape.<sup>79</sup> For example, neighborhoods have been targeted because of the presence--and the presumption of the presence--of many Aristide supporters. When women have been accused, they have been raped:

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<sup>77</sup> See, Affidavit of Nancy Kelly, Case of K.K. Appendix, Volume II: Affidavits, Statements and Testimony Item #34.

<sup>78</sup> See, Affidavit of S.R. Appendix, Volume II: Affidavits, Statements and Testimony Item #23.

<sup>79</sup> "It is clear that the political oppression affecting the whole country is particularly concentrated in working-class districts...and in localities and zones...which are well known for their sympathy and support for President Aristide. Victims are often called "lavalassiens" (sympathizers of the President) even if they have no political affiliation." Civilian Mission Report, supra, note 3 at 19. For this reason, according to OAS monitors, 44 out of 77 violations committed during March of 1994 were committed in Cite Soleil. *Id.* at p. 7; Rape by Pro-Military Groups On Increase in Haiti, Reuters, (March 21, 1994) Appendix, Volume I: Documentation Item #79 (FRAPH increasingly targeting female relatives of Aristide supporters in poor neighborhoods in political rapes).

We went to Cite Soleil, a shanty town in Port-au-Prince, where political oppression is at its worst. Although I thought I was familiar with the situation in Haiti, I was unprepared for the depth of degradation I found. Women told us of being repeatedly raped and beaten. Their tin makeshift homes were destroyed and their meager belongings stolen. Those women who were left alive were left with nothing. I was told of children as young as six who had been gang raped. I went to this slum to meet with members of SOFA and to speak with some of the women SOFA<sup>80</sup> was treating at their health clinic. The members of SOFA told me that the rapes and beatings by military personnel and their attaches are targeted and systematic. Anyone remotely suspected of being sympathetic toward Aristide is at risk.<sup>81</sup>

In many cases, perpetrators have raped women while their scream that the victims are "Lavalasienne," and repeat that they will "kill the Lavalasiennes".<sup>82</sup> In one report, a market woman was raped by a member of a pro-military group, one of whom said "she deserved what she got because she had probably supported deposed President Jean-Bertrand Aristide."<sup>83</sup>

D. The Attacks on Women and the Destruction of Civil Society

While a large number of reported cases of sexual violence against women have involved abductions off the street or rapes after being taken into custody,<sup>84</sup> in many instances the

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<sup>80</sup> See, Statement of Vivian Stromberg I, supra, note 42 ("SOFA" is a Haitian women's organization funded in 1986 whose programs deal with health, education, economic development and domestic violence.").

<sup>81</sup> *Id.* at 2.

<sup>82</sup> *Id.*, at 4; Statement of Vivian Stromberg (II) supra, note 56 at 6; Transcription of Haitian Women's Testimonies Appendix, Volume II: Affidavits, Statements and Testimony Item #36 (women testifying about gang rapes and beatings by men accusing them of being Lavalasiennes).

<sup>83</sup> Latest Tool of Terror in Haiti: Rape, Women Who Support Aristide are Targeted, The Miami Herald (April 13, 1994) at Sec. A, 1, 12 Appendix, Volume I: Documentation Item #108.

<sup>84</sup> See e.g., Howard French, Haitian Dissident Tells of Rape by Police Agents, The New York Times (June 26, 1994) at Sec. 1, p. 10 Appendix, Volume I: Documentation Item #55 (reporting the case of Rose Margui, a member of Comme Il Faut, who was abducted by four men while walking with her boyfriend in Port-au-Prince, she was questioned concerning her Aristide activities, insulted for her support of President Aristide, and raped by the four men over the course of two hours).

perpetrators have attacked women in their own homes.<sup>85</sup> Often these men have dragged women from their beds or their homes in the middle of the night. The effect has been to create a climate of terror. "Assaults on women in their homes often are accompanied by the destruction of the house and personal belongings and assaults on other family members."<sup>86</sup> This terror has been greatly exacerbated by the lack of any effective remedy or means of redress.<sup>87</sup> As one woman explained, "going to the police would be the equivalent of a death wish."<sup>88</sup> In addition, rape

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<sup>85</sup> See e.g. *supra*, note 2.

<sup>86</sup> HRW/NCHR Report, *supra*, note 5 at 8; Enfofanm I and II, *supra*, note 17.

<sup>87</sup> In Haiti, there is no person or institution that can provide protection or redress. The attacks usually have been carried out by or with the tacit approval of the de facto government, because, as noted, it serves the purpose of its leaders in controlling the population and destroying any opposition. See *supra*, notes 23-34 and accompanying text. Indeed, in many of the reported cases the attacker was clearly identified as a member of the military or police. As noted, the attaches, who are civilians employed, armed and directed by the military, act with impunity and the acquiescence of the military, as do members of FRAPH. While the relationship of the zenglendos to the government is somewhat less direct, it is widely accepted that they act with the acquiescence of the government and direct their abuse against those perceived as Aristide supporters. See *supra*, notes 31-33. In the rare cases in which women have attempted to report politically-motivated rape to the police, the authorities have failed to pursue their complaints, and, in some cases, have threatened reprisals. HRW/NCHR Report, *supra*, note 5 at 18-20. Corruption is rampant, the judicial system is ineffective, and in practice--contrary to the terms of the Constitution--military rather than civilian authorities conduct the investigations of these crimes. *Id.* at 16-19. Perhaps the most critical reason for non-reporting has been that the police "investigators" and the perpetrators often have been the same, or have been closely linked. The United States State Department recently reported on this connection:

...the armed forces have retained control of policing functions. The police attaches are quasi-official agents of the security apparatus, who conduct low level surveillance of the populace, enforce repression, and organize vigilante action. The Chefs de Section constitute the rural branch of the military structure, and answer to the army's departmental commanders. *The regime directs, encourages or permits these organizations and individuals to violate human rights with impunity.* (emphasis added) DOS Haiti Report, *supra*, note 5, at 1.

In addition, there are procedural obstacles to the reporting of rape, including the necessity in practice of corroboration in the form of physical certification from a private doctor which most women cannot afford. HRW/NCHR, *supra*, note 5 at 20. For all of these reasons, women do not report rape.

<sup>88</sup> HRW/NCHR, *supra*, note 5 at 18.

causes women to be shamed,<sup>89</sup> and often driven from their communities. The HRW/NCHR Report stresses the loss of "honor" experienced by rape victims who often have been abandoned by husbands or boyfriends and who have received little support from the community:

Rape in Haiti, as in most of the world, is considered an extremely shaming act. Women, particularly unmarried women, do not want anyone to know they have been raped...

Nor do married women escape this consuming sense of shame...<sup>90</sup>

The experiences of individual women bear out this perception. After her rape in Port-au-Prince, one woman attempted to return to her community, but was rejected. She was told that, because of the rape, she could no longer live in her rural community but must return to Port-au-Prince. Having no shelter in Port-au-Prince and being sought by the de facto government, she remained in desperate fear for her life.<sup>91</sup>

The emotional and psychological effects of this sexual violence on the survivors has been devastating. Survivors suffer from continuing terror, a sense of hopelessness, and physical symptoms including nightmares, headaches and inability to sleep.<sup>92</sup> Clare, a 16-year old raped when her family was attacked as Aristide supporters, did not return to school after the attack

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<sup>89</sup> An additional reason that women have been reluctant to report rape is because of the social stigma attached to it. See, HRW/NCHR Report, *supra*, note 5 at 10 ("Rape, under the Haitian penal code, is among those crimes considered to be 'assaults on the morals.' This classification of rape reflects the perception that the harm inflicted by the assault consists of damage to the victim's morals or honor, rather than to her physical integrity and well-being. The investigation and prosecution of rape thus routinely stress not the physical harm done to the women, but rather the status of her honor and morals.").

<sup>90</sup> *Id.* at 21-22.

<sup>91</sup> See, Videotaped testimony submitted with this Communication, *see supra* note 62 and accompanying text (paraphrase of testimony of woman contained in the videotape).

<sup>92</sup> See generally, Statement of Vivian Stromberg II, *supra*, note 56; Affidavit of Marie-Louise Jean-Baptiste, *supra*, note 44.

because she could not face her classmates. "Clare feels humiliation and shame. She is unable to face herself because of what happened to her."<sup>93</sup>

The result of these attacks on women has been to undermine their dignity, sense of self, and basic security. Rape of women has been part of a campaign designed to terrorize the population and destroy the foundations of civil society. Particularly since the failure of the Governors Island Accord, increasing numbers of people have been forced to leave their homes; tens if not hundreds of thousands of Haitians have been internally displaced, living in hiding, "en marronage." This has been part of the military's strategy to "destroy" all forms of social and political organization."<sup>94</sup> As the HRW/NCHR Report notes:

"[a]lthough men are the majority of those driven into hiding, women often are kept from taking this drastic, but often life-saving, measure by their responsibility for their children. Thus women become de facto single parents, forced to shoulder the economic burden that marronage creates and to live with the uncertainty of not knowing whether their husbands or partners are alive or dead. The high level of internal displacement has resulted in severe economic hardship as families are separated and lose their already limited sources of income."<sup>95</sup>

Women have been left behind--responsible for their children and other family members--at

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<sup>93</sup> See, Statement of Mary Healy(II), *supra*, note 60 at 4. Vivian Stromberg also describes the shame felt by these women: "Many women had difficulty sleeping. More striking, however, was the fact that almost half of the women wore multiple layers of undergarments. The Haitian counselor at the meeting explained that this practice was due to the women's shame and trauma that resulted from their rapes.

None of these women is able to live in her former home. They have been forced into hiding and survive by staying with friends, family or neighbors who have some spare room or a floor space in their own homes." Statement of Vivian Stromberg I, *supra*, note 42.

<sup>94</sup> HRW/NCHR Report, *supra*, note 5 at 5.

<sup>95</sup> *Id.* See also, Enfofanm I and II, *supra* note 17, (documenting the deliberate destruction of women's livelihoods, particularly in the raids on women who sell and often live in the markets and are seen as favorable to President Aristide; as a result of the raids, which shut down the market and scare away their customers, women lose their perishable goods and the meagre capital which supports their enterprises and are left in extreme poverty).

the same time as the trauma and terror of this campaign of rape and other violence has rendered them vulnerable in their homes and forced many into flight. As described by the New England Observers Delegation Report, this campaign of rape and violence directed against women which strikes at the very core of society, has been the military's "signal to the world that it has removed all limits to its transgressions, thereby forcing the population into compliance with its rule."<sup>96</sup> Still, as the report explains, "[w]hat impressed us most..was the ability of Haitians to live with dignity--and in many cases to resist actively--in the face of economic and political conditions that are grim beyond description....Amid the epic stories of terror, hunger and displacements recounted, clearly discernible was Haiti's women as a great sea of courage washing over their misery."<sup>97</sup>

We are calling on this Commission to recognize, in some small measure, the courage of Haiti's women and to vindicate their hopes for democracy by issuing a full report on the abuse of women and by taking decisive action to ensure, at this time of tremendous danger, the protection of their human rights, the accountability of the violators, and the disarmament of all those implicated in this reign of terror.

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<sup>96</sup> NEOD Report, *supra*, note 13 at 2.

<sup>97</sup> *Id.* at 5 and 32.

# EXHIBIT

16

#2 pg 1  
AFFIDAVIT [REDACTED]

I, [REDACTED] hereby depose and state as follows:

1. I am a citizen of Haiti. I live on [REDACTED] [REDACTED] Port-au-Prince, Haiti. I live with my mother and with older brother. I had a sister but she died when she was little. My father died in 1993. I am fifteen years old.

2. I am writing this affidavit to describe a human rights violation of which I was a victim. The incident occurred in February of 1994. I was fourteen years old at the time.

3. My mother sent me to my father's house to see my step-mother to give her some money that my mother owed her. After I left her house I was walking home. On the way I saw a group of men. There were about 6 of them. They began to yell at me. They said, "Ch-ch-ch, ay-ay, girl-girl, come here." I didn't go. I began to run. Three ran after me. One grabbed my 2 legs. Another grabbed my head. They dragged me into an old abandoned house on 4th Avenue. Two were wearing olive green military uniforms. The third was dressed in civilian clothes. One had a gun. It was a small gun.

4. One looked familiar. He lived nearby in an area called Flambert. I used to see him at the FRAPH office.

5. When we were in that house they didn't speak. They hit me in the face and kicked me in the stomach. They pushed me on the floor; I was crying. They pulled down their pants -- all 3 of them. They pulled hard on my clothes and the buttons fell off my shorts. My panties just ripped. One man got on top of me and raped me. Then the next and then the third one. My vagina hurt

#2 pg 2

stomach. The one with the gun took it out and pointed  
Another one took the gun away from him. All the time I

With great difficulty I finally got home.

Two men who live in the neighborhood came. They saw  
what happened and told my mother. They said that they saw the  
men drag me and kick me. They saw the men take me to the house.  
They were afraid to stop them because they were the FRAPH. They  
didn't know what to do.

7. My mother took me to the doctor because my head hurt so  
much from when the men hit me. The doctor gave me medicine.

8. Now I feel shy. At school I have trouble  
concentrating. When I hear noises I feel scared. I am ashamed  
when I remember. I cry when I remember. Sometimes I try not to  
remember. But I remember anyway.

Signed under the penalties of perjury this day the 27<sup>th</sup> of

March, in Port-au-Prince, Haiti.

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# EXHIBIT

17

AFFIDAVIT [REDACTED]

I [REDACTED] hereby depose an state as follows:

1. I am a citizen of Haiti. I live [REDACTED] Haiti. I was born on March 20, 1963. I work as the coordinator of the women's section of the Center for Research and Action for Development (CRAD). I have also been a member of Haitian Women's Solidarity (SOFA) since 1987. SOFA and CRAD have had a long-standing cooperative working relationship. CRAD supports the work of SOFA with women who are survivors of rape and other human rights abuses that occurred during the time of the coup in Haiti.

2. Among the issues SOFA has addressed is violence against women, including domestic violence. During the coup, we became aware of serious human rights violations against the women in the popular areas. What we found was that there was a systematic campaign of rape against women in these areas. We began a campaign to denounce and address the needs of these women. We are currently working with over 200 women who are survivors of political rape carried out during the coup.

3. Many of these women were attacked at night by men wearing army uniforms, sometimes olive green, blue police uniforms, khaki uniforms or civilians. When they didn't wear an entire uniform, often they were wearing a part of the uniform, either the boots, the shirt or pants... The aggressors were always armed with machine guns, revolvers, or what we call white arms (weapons such as knives, machetes or sharpened iron rods). They practiced collective rape on girls and women of all ages. Even pregnant women were raped. While the men were raping them,

them, they named the women as Aristide partisans, "Lavalas", members of popular organizations, or simply as living in an poor area in which it was known that Aristide supporters lived. Usually these rapes were carried out on days when something significant happened regarding the political situation in Haiti, for example, when there was some sort of progress in the negotiations regarding President Aristide's return to Haiti, or days when the FRAPH had called a general strike or street demonstration. The ways in which these rapes were carried out was calculated to cause the maximum physical and emotional pain. For example, women were always beaten when they were raped and they were almost always raped in the presence of their children. In some cases, young boys were forced to rape their mothers, and some were killed when they refused. The rapists virtually always robbed their victims.

4. We found that there were three major common problems these women faced as a result of these attacks: 1) health problems, both physical and emotional, 2) economic problems, and 3) housing problems. These problems were either the direct result of or were greatly exacerbated by the rape and other harms inflicted upon them.

5. The women suffer from very serious long-term health problems resulting from the rapes and the beatings that accompanied them. These problems include sever vaginal infections, headaches, eye problems, ears problems, hemoraghing, severe pain in the lower abdomen and in the lower back. In addition, virtually all of these women suffer very serious

psychological consequences like inability to sleep at night and have nightmares, they are constantly in fear at night and become extremely frightened when they hear noises, they feel humiliated and angry, they have thoughts of suicide, they cannot stop thinking about what happened.

6. In addition, the economic consequences faced by these women are devastating. In every case, the men asked for money and took everything valuable these women had. It is a way to take everything from them and to keep them from having a chance to start again. Most of these women were single mothers, small vendors who supported their families by selling goods, food, and The men took literally everything, including all their goods, and all the money they had to replace them. None of these women have bank accounts. Everything they had was in their homes. Often the money that they had was borrowed from individuals at high interest rates. There is no way for them to get a loan from anywhere to start there business again. They were left with nothing and no way to earn a living or support their families.

7. Virtually all of these women lost their homes as a result of what happened. In most cases the women were too afraid to remain in their homes because they were frightened that the men would return. In many cases the men had told them they would be back. In some cases, they did come back. These women lived in homes that had only one or two rooms. For a woman who has been raped in her home - especially when it is very small - to remain all the time in those one or two rooms is extremely hard. The women felt that they had been made dirty. They feel that

experience it as a political weapon against our people. This is clear from the way it has increased and taken different forms with each political crisis. for example, under Namphy's regime, when the phenomenon of the zenglendos started, these men would go to every house in the popular neighborhoods like Cite Soleil, Martissant, Carrefour, Carrefour-Feuille, St. Martin and Delmas, and systematically rape the women. After the coup, the situation increased dramatically. It reached a peak after the Governor's Island Accord when FRAPH, the criminal Puschist gang was founded.

11. Although the use of rape as a political weapon was evident to everyone, the Puschists and their allies tried to characterize it as a series of random criminal acts. they even tried to characterize it as a part of our culture. This is an insult to the women who have been raped and to the whole of Haitian society.

12. For the dignity of the women, for the good of the Haitian people, we must insure that those responsible for these atrocities are held accountable. For that, we support the struggle of these women for justice and for reparation.

Signed under the penalties of perjury this day, the of  
March, 1995 in Port-au-Prince, Haiti.



# EXHIBIT

18



## REPORT ON THE SITUATION OF HUMAN RIGHTS IN HAITI 1995

### **9. Haitian Agreement Between the US Government and the Military**

88. In view of the critical situation that Haiti was undergoing and an imminent invasion, the Commission stated, on August 31, that at its next session in September it would examine the Haitian situation in detail and any measures it could take to help alleviate the continuous pattern of human rights violations in that country.

89. On September 15, 1994, given the refusal of the military authorities to leave power, President Clinton announced the invasion of Haiti. The following day, he let it be known that as a last effort to avoid the armed intervention, a mission would be sent, composed of former President James Carter, General Colin Powell, and Senator Sam Nunn, to discuss terms for the departure of the military leaders from the country. On September 18, the United States Government issued information on the agreement obtained with General Cédras to leave power peacefully with a time limit until October 15, and during that period, the Haitian Parliament would work on the amnesty law. A part of the agreement stipulated that the Haitian police and military forces would work in close cooperation with the United States military mission. This agreement was received in various quarters with many questions.

### **10. Arrival of the Multinational Force**

90. The Multinational Force headed by the United States arrived on September 19 in Port-au-Prince and would remain in the country until the arrival of UNMIH. On that same day, the OAS/UN Special Representative for Haiti Mr. Dante Caputo offered his resignation, indicating in his letter the total absence of consultation between the United States and the UN and the decision taken unilaterally in the Haitian process. Four days later, the UN Secretary-General appointed the former Foreign Minister of Algeria Mr. Lakhdar Brahimi as his Special Representative for Haitian Affairs.

91. In view of the pending disembarkation of United States marines, a large sector of Haitians had gathered in Port-au-Prince to observe their arrival and demonstrate their joy at what, for them, meant protection of their personal guarantees, when Haitian policemen dispersed people, severely beating demonstrators in the presence of members of the United States force, who did not intervene. These acts of violence left a toll of two dead and several wounded. Days later, at Cap Haïtien, there was an armed clash between a patrol of the Multinational Force and Haitian military operatives, in which ten of the latter died.

92. The acts of violence were denounced by the Permanent Council of the OAS in its Statement CP/DEC. 21 (1006/94) of September 22, 1994, in which it requested the return of the International Civilian Mission to Haiti and urged the IACHR, in accordance with President Aristide's request for a visit to be carried out, to help defend and promote human rights in Haiti. In the same statement, the Council, like the UN, expressed its satisfaction with the progress that had been achieved in the quest for a peaceful solution to the Haitian crisis.

93. On September 29, 1994, the United Nations Security Council approved Resolution 944 asking the Secretary General to take the necessary steps for immediate deployment of observers and other members of the advanced group of the United Nations Mission in Haiti.

94. On October 5, 1994, the Haitian Parliament initiated the draft amnesty law for members of the military who took part in the coup that overthrew constitutionally elected Jean-Bertrand Aristide. The new bill contains an amendment to article 3 of the old 1860 amnesty law, which stipulates that, under the Constitution, only the head of state may grant amnesty, and only in political cases, that is, cases of crimes or offenses against the public interest (*res publica*), or against the country's interior and exterior security for crimes against public order, plus crimes and accessory offenses defined as such by the Penal Code. The law was passed on October 6, 1994.

95. Since the Governors Island Accord in July 1993, Haitian military leaders have demanded that they be given amnesty in exchange for the return of President Aristide. They have insisted on a broad law covering all violations resulting from the coup d'état of September 30, 1991.

96. On October 3, 1993, President Aristide had issued an amnesty decree covering the political violations committed from September 29, 1991 to July 3, 1993. This amnesty did not cover common crimes, nor would it protect against civil suits against those responsible for human rights violations committed in Haiti after that date. The decree was rejected by the military leaders, who demanded a law covering the entire period of the *de facto* regime.

97. On October 10, one day before his term was to expire, General Cédras announced he would leave the country and transferred command of the armed forces to Major General Jean-Claude Duperval, who had been officially appointed to that post by President Aristide in December 1993. Under the asylum granted by the Government of Panama, Generals Raoul Cédras and Philippe Biamby and 14 members of their families left the country on October 12. A week earlier, Lieutenant Joseph Michel François, the Haitian Chief of Police, had entered the Dominican Republic under a tourist visa issued by the Dominican Government authorizing him to stay there temporarily while he was arranging for permanent residence in some other country. Later, most of the officers of the same rank as Cédras left Haiti to take military attaché posts in various countries.

98. In a note of October 11, the OAS Secretary General announced the end of OAS sanctions against Haiti, after consulting with the ministers of foreign affairs of OAS member countries, and at the request of President Aristide. The suspension of commercial flights and international financial transactions with Haiti were lifted, while the other sanctions remained in force until President Aristide returned to office.

## **CHAPTER IV: THE SITUATION OF HUMAN RIGHTS IN HAITI**

### **1. Introduction**

99. This chapter deals with the situation of human rights in Haiti from January to August 1994. The analysis of the situation is based mainly on the information obtained during *on-site* visits carried out in Haiti in May and October 1994, through direct testimonies and documentation received from nongovernmental groups and individual complaints, and documentation received at the Commission's headquarters and in the information provided by the OAS/UN International Civilian Mission.

100. This chapter offers a general overview of the situation of human rights in Haiti during the period of January-August and presents examples of cases that illustrate the types of violation that the Commission observed most often. And new repressive methods are mentioned as used by the military or para military groups: the massacres against the rural population; the appearance, in Port-au-Prince's streets of mutilated and disfigured corpses; violence perpetrated against women and rape, are also covered and violations against children's rights. Most of the violations denounced to the Commission and described in this chapter refer to acts committed during the dictatorial regime.

## **2. Repression**

101. Most of the violations recorded by the Commission refer to acts committed between January and September 1994 by representatives of the Armed Forces, paramilitary groups, and members of Revolutionary Front for the Advancement and progress of Haiti (FRAPH), whose operations were coordinated with the army and the police. Despite the condemnation by the international community, the harsh information on Haiti presented by OAS and UN agencies permanently responsible for monitoring human rights and by the International Civilian Mission, as well as the widening of sanctions imposed under the embargo, the military authorities did not meet human rights commitments. On the contrary, whenever there was an attempt at political expression, the soldiers intensified the repression against the Haitian people.

102. Since the coup d'état of September 29, 1991, an estimated 3,000 persons were murdered. In 1993, following the signing of the Governors Island Agreement, the repression escalated to alarming levels when the people, encouraged by this agreement, publicly expressed their support for President Aristide. Cases of arbitrary arrest, beating, illegal search, confiscation of goods and arson, abduction, and torture increased, and this forced victims and their family members to abandon their homes and live underground. President Aristide stated, mid-1994, that the number of deaths had risen to 5,000.

103. The repression that was systematically carried out by the soldiers was aimed at destroying any type of organization, right of expression, or activity in support of the democratic regime. As of January 1994, the *de facto* regime applied new methods that were particularly effective for spreading terror among the people, including practices such as raping the wives or family members of militants in favor of Aristide's return. When the soldiers, *attachés*, or FRAPH members did not find such militants, they abused the women and children who were present. Sexual abuse was thus used as an instrument of repression and political persecution. During the IACHR's visit to Haiti in May 1994, in spite of victims' reluctance to denounce such crimes, the Commission received 21 reports of rape and sexual abuse and directly interviewed the victims of this horrible practice. On that occasion, the Commission pointed out that the international community had repeatedly recognized the universal nature of the rights of women, as well as the fact that these violations constituted one of the worst crimes against them.

104. Another method of terrorizing the people consisted of leaving in the streets of Port-au-Prince the severely mutilated corpses of victims, which were partly eaten by animals in view of the fact that the authorities in power took no action. These reprehensible acts had the dual

purpose of preventing victims' identification by family members, thus preventing the latter from seeking legal recourse, and creating an atmosphere of repression to prevent any type of popular demonstration.

105. In the interior of the country also, the number and the brutality of human rights violations increased. The Commission obtained testimonies that irrefutably established the army's responsibility in the massacre of defenseless people in Raboteau, Gonaïves, *Département* of Artibonite, on March 22, 1994. There, 15-20 persons were executed with no justification whatsoever. Also, the army attacked people in the *Départements* of the Center (Saut d'Eau) and the North (Borgne). The Commission received information on the campaign of repression that was carried out in Borgne, where arson was used as a strategy of terror.

106. These attacks all showed similar characteristics: veritable military campaigns in which army units, assisted by FRAPH and other paramilitary groups, surrounded and erupted in localities under the pretext of combating subversive groups and locating illegal arms, indiscriminately beating up people and committing acts of arson, destruction of their crops and robberies, followed by arbitrary arrest. During such raids, farmers were forced to pay "ransom" so as not to become the victims of these abuses.

107. During the Commission's visit in May 1994, it also observed that most violations of which it was informed followed a systematic pattern of repression, revealing a political plan of intimidation and terror against the Haitian people, especially in sectors that supported President Aristide or that had demonstrated in favor of democracy in Haiti. Thus, in the marginal slums of Port-au-Prince, such as Cité Soleil, Sarthe, Carrefour, and Fonds Tamara, armed paramilitary groups carried out raids late at night, murdering and robbing people living there. At other times, according to information received, victims were abducted; they were forced to get into vehicles and were led blindfolded to clandestine detention centers, where they were interrogated and tortured. Some of the victims were freed after several days, while others succumbed to the severe blows inflicted on them. During its stay in Haiti, the Commission received information on 133 cases of extrajudicial executions perpetrated between February and May 1994.

108. The Commission noted that the exercise of the right of assembly did not exist for those who supported the return of democracy. When groups of individuals tried to exercise it, they were arrested and brutally beaten by soldiers and policemen, who accused them of being terrorists. One example of these acts was the arrest of a group of 20 persons in Hinche, in the Central *Département*, on April 29, 1994.

109. The same situation occurred with respect to the right of expression. Information received by the Commission made it possible to confirm the constraints suffered by representatives of the Haitian press and radio who were subjected to acts of intimidation and repression, and this led to the self-censorship by the information media. Most radio stations concentrated on providing musical programs, for fear they would be destroyed, and news on the political situation in the country was spread by foreign journalists, who did so under many constraints and at their own risk.

110. Acts of repression and intimidation also affected members of the International Civilian Mission, who were harassed by the Haitian authorities on various occasions. On March 23, 1994, members of the Mission in the region of Hinche (Plateau Central) were assaulted by numerous demonstrators led by members of FRAPH, with local military authorities making no move to stop their acts and thus clearly showing their complicity with members of the attacking group.

111. At the end of its visit in Haiti on May 1994, the Commission concluded that the serious deterioration of the human rights situation in keeping with a plan of intimidation and terror against defenseless people. It held the authorities holding *de facto* power in Haiti accountable for these violations, since they engaged in conduct that justified accusations of international crimes that generate individual responsibilities.

### **3. Consequences of the Repression**

#### **A. The "marronage" phenomenon**

112. Since the coup d'état in 1991, the climate of terror and lack of security that prevailed in Haiti led a large portion of the people to move to the interior of the country or from rural areas to the capital, in search of refuge. They were thus forced to abandon their homes and go into continuous hiding. In its report on Haiti of 1991, the Commission indicated that approximately 300,000 persons had been affected by this massive displacement. During its on-site visit in May 1994, the Commission stated its concern with the number of displaced Haitians who were obliged to choose to live like fugitives in their own country. This continued to increase in alarming proportions.

113. The phenomenon of massive displacement as a result of the repression is known in Haiti as marronage (*marronage*) and has become a strategy used by the soldiers to eliminate all types of opposition to the *de facto* regime. The constant flight of a large portion of the population has damaged its ability to become organized, thus suffocating the political, social, and economic structures that might have represented a threat to the illegal regime installed by the military authorities.

114. Marronage has affected persons and organizations of different levels, including politicians, journalists, priests, members of human rights groups, grassroots groups, unions, and a large number of inhabitants of the highly populated slums. A high percentage of the cases of marronage involved persons who openly supported the democratic regime. For the most part, they were men, but there were also numerous cases of women or entire families who took refuge underground. Numerous civil servants of the legitimate Government were forced to go into hiding; this included the case of Mayor of Port-au-Prince Evans Paul, whose reinstatement under Prime Minister Malval was violently interrupted by armed men. Many grassroots organizations, such as rural cooperatives and development, educational, and civic associations also went into hiding, attempting to maintain contact and mutual help among their members, while others simply disbanded in the process of flight.

115. The common element in the marronage phenomenon was the fear experienced by these persons, which forces them to sleep away from their homes, moving every night to different locations so as not to be found, or moving to another location so as to flee repression. Unfortunately, displaced persons did not always find places where they can remain continuously, and this obligated some to leave their family life. For many of them it was impossible to get back with their families. In this way, there emerged a virtual disintegration of the family unit, and there were very frequent cases of displaced persons not managing to obtain news of their wives or children. As a result of the constant flight, jobs were abandoned, and political and social activities became restricted or disappeared.

116. The *de facto* regime's ability to make displace persons within the country itself was a result of the absolute impunity enjoyed by those carrying out the repression. For example, in some cases, local authorities ordered prisoners to leave the region once they had been freed or were arrested again. Some who tried to return were arrested and in some cases, murdered.

117. As stated above, the phenomenon of marronage began with the coup d'état of 1991, but this reached alarming proportions following the signing of the Governors Island Agreement, as a result of the resurgence of the repression by soldiers. As of 1993, with the emergence of FRAPH acting in complicity or with the help of the soldiers, veritable systematic attacks were launched against the people. One of these attacks was the burning down of a section of Cité Soleil, which left tens of dead persons, hundreds of homes destroyed, and thousands of persons displaced. Further examples of the collective displacement as a result of these attacks were the Raboteau massacres and the fires at Borgne.

118. Another consequence generated by marronage is the economic problem, since when a person who represents the economic support of a family is forced to flee, the family's means of subsistence are cut off abruptly. In rural areas, displacement has meant that the fields remain deserted and crops are lost. In some cases, section chiefs have seized the lands and property of fleeing families.

### **B. Violence against women and sexual abuse**

119. As mentioned above, since the coup d'état against President Jean-Bertrand Aristide, the illegal *de facto* regime has committed a multitude of human rights abuses against the civilian population, particularly since mid-1993 after the failure of the Governors Island Agreement. The destruction of democratic movements in Haiti has created a climate of terror, and women have been used as victims. The primary instruments of the repression inflicted on women and children in Haiti have been rapes and other types of violence and abuse committed by members of the army and police forces, their armed civilian auxiliaries, the *attachés*, paramilitary groups, and members of FRAPH, acting with complete impunity.

120. Women of varying ages and circumstances, from pregnant women to five year-old girls, are among the victims of rape. Women who played an important role in the formation of democratic institutions in Haiti were identified because of their political activities. Many Haitian women's organizations were attacked; others were destroyed. Other women were identified because of their personal links and family relationships, and reprisals were taken against them for the political ideas and activities of a spouse, son, father, nephew, or other male family member. Some women were identified because of their own status and role in helping the civil society. The fact of belonging to a popular organization or being involved in an activity whose purpose was to improve the local community was considered as the expression of a political opinion in favor of President Aristide. Numerous women were abused merely because they lived in a slum that supports President Aristide (Cité Soleil). Remaining alone to care for their children because their husbands had to flee or were murdered, many of them were easy, defenseless prey.

121. The OAS/UN Mission affirmed, in this respect: "It always happens in the same way: armed men, frequently soldiers or FRAPH members, violently enter the house of a political militant to arrest him. When he is not there and the family cannot say where he is, the intruders turn against his wife, sister, daughter, or cousin."

122. Sexual abuse against Haitian women was carried out in various ways, but with a single aim: to create a climate of terror among people supporting Aristide. Women were generally raped by several men on the same occasion. Pregnant women and those who had just given birth were not safe from these crimes. Often, a violation occurred in the home of the victim, in front of the children and other family members, and thus not only the woman, but the entire family was terrorized. In many cases, the woman was forced to witness the rape or murder of her daughter or other family member before being herself raped. In one case of which the IACHR was informed, a 15 year-old was forced to rape his own mother.

123. Other forms of sexual torture included blows to the breasts and stomach, often inflicted on pregnant women with the intention of causing them to abort or damage their ability to have children. Many women were brutally murdered by soldiers or *attachés*, who shot them or pushed sharp objects in their vagina. In addition to the sexual abuse, women were illegally detained and subjected to other forms of torture that resulted in mutilation.

124. Haitian women have rarely presented complaints about violations to the police, partly because of fear of reprisals, since in many cases the perpetrators were soldiers who were part of the police. Historically in Haiti, the police force has been a part of the army, and it is essentially soldiers who carried out policing functions. In the few cases where women attempted to report violations committed by soldiers and their auxiliaries, the authorities threatened them with reprisals, or simply did not investigate their complaints. On the other hand, there was the corruption and inefficiency in the judicial system and, in practical terms, in contradiction with the 1987 Constitution (Articles 42 and 43), the army, rather than the civilian authorities, investigated such cases. On the other hand, neither does the shame imposed by society on a woman who has been raped encouraged her to make a report on the attack. This underlines the importance of clearly recognizing sexual violence as a serious human rights violation.

125. The wounds inflicted on women who were abused sexually are both physical and psychological. Many of them feel shame and, what is more, cannot return to their hometowns for fear of rejection. In numerous cases, their private lives and family relationships have deteriorated. In other cases, the results of medical tests carried out on some women showed them to be HIV positive, while other women died because of sexual abuse.

126. During its visit to Haiti in May 1994, the IACHR received news of 21 cases of rape. Victims who gave their testimonies before the IACHR Delegation refused to give their names for fear of reprisals. The Commission presents a summary report of two cases which have the same elements and characteristics as contained in the 21 cases of rape.

"The victim is 42 years old and a member of the National Front for the Change and Democracy (FNCD). Her husband was murdered, and she was persecuted by members of FRAPH and "macoutes." In October 1993, about 7:00 or 8:00 p.m., members of these groups went to her daughter's house to find out where she was and kill her. Three men entered the house; the others remained outside. The men were dressed in olive green clothing and carried Uzis. They threatened her: "You support Aristide. You are a "Lavalas." We'll kill everyone we find in the house." Two of them raped her and they took away everything she had, including money. The victim stated that she had a medical certificate. After the above-mentioned events, the victim hid a few days at the home of friends, who finally asked her to leave because they were afraid. The victim and her five children now have nowhere to live. In May 1994, she received further threats and was beaten by two civilians".

"The victim is 46 years old. Around midnight on November 29, 1993 as she slept, three men entered her home. They were wearing olive green uniforms and carrying Uzis and pistols. Some wore hoods. A number of them raped her; they beat her and destroyed her property. They also threatened her, saying that if there was talk of the incident the next day on the radio, they would return and kill her. They told her what occurred took place because she was an Aristide supporter. Although the neighbors heard noises, no one came out of their house to help her for

fear of being killed".

127. This campaign of violations increased in intensity in early 1994. The OAS/UN International Civilian Mission pointed out that between February and July 1994, 77 cases of sexual violation were reported, including 55 against women who were militant or had close relations with male militants. Some human rights groups working specifically on the issue of women indicate that they have counted up to 18 violations in a single day, many of which were clearly reprisals for political activities. This use of sexual violence was documented in reports made by the IACHR, the OAS/UN International Civilian Mission, nongovernmental organizations such as Human Rights Watch and the National Coalition for Haitian Refugees, and a number of Haitian women who fled Haiti and obtained refuge in the United States.

128. The exhaustive and detailed information presented to the IACHR by representatives of nongovernmental organizations, such as Haitian Women's Advocacy Network, International Women's Human Rights of CUNY Law School, Human Rights Program, Immigration and Refugee Program of Harvard Law School, Women Refugees Project, Center for Human Rights Legal Action, Center for Constitutional Rights, MADRE, and the Law Office of Morrison and Foerster, clearly shows sexual violations and other types of violence against Haitian women as a form of reprisal, intimidation, terror, and degradation of women.

129. In the great majority of cases, it was demonstrated that the acts of sexual abuse were committed by representatives of the army and the police and their armed civilian auxiliaries, with the authorization or tolerance of the illegal regime. This therefore constitutes a violation of Article 5 of the American Convention on Human Rights, which deals with the right to humane treatment, and Article 11 concerning the protection of honor and dignity.

130. These abuses against Haitian women also constitute violations of other provisions of the Convention and of the American Declaration of the Rights and Duties of Man, as well as of other international treaties that Haiti has ratified and is obliged to respect: the Inter-American Convention to Prevent and Punish Torture and the Convention on the Elimination of All Forms of Discrimination Against Women. The relevance is also noteworthy of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, recently approved at the meeting of the OAS General Assembly in June 1994 in Belem do Par, Brazil.

131. In the past, the Commission considered a number of cases of sexual and other abuses against women, as a result condemning violations of the rights contained in the Convention and the American Declaration.

132. In the case of Haiti, sexual violations were the result of a repression for political purposes. The intention of those in power has been to destroy any democratic movement whatever, through the terror created by this series of sexual crimes.

133. The Commission considers that rape represents not only inhumane treatment that infringes upon physical and moral integrity under Article 5 of the Convention, but also a form of torture in the sense of Article 5(2) of that instrument.

134. Consistent with the definitions elaborated in the Inter-American Convention to Prevent, Punish and Eradicate Torture, which Haiti has signed, and the United Nations's Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Commission considers that the rape and other sexual abuse of Haitian women inflicted physical and mental pain and suffering in order to punish women for their militancy and/or their association with militant family members and to intimidate or destroy their capacity to resist the regime and sustain the civil society particularly in the poor communities. Rape and the threat of

rape against women also qualifies as torture in that it represents a brutal expression of discrimination against them as women. From the testimonies and expert opinions provided in the documentation to the Commission, it is clear that in the experience of torture victims, rape and sexual abuse are forms of torture which produce some of the most severe and long-lasting traumatic effects.

135. The facts submitted to the Commission reflect that rape was neither random nor occasional but widespread, open and routine. Whether this occurred by direction of or with the encouragement or acquiescence of the illegal regime, the Commission considers that such use of rape as a weapon of terror also constitutes a crime against humanity under customary international law.

136. The Commission notes recognition in recent years of the gravity of rape in international human rights law, including the emphasis by World Conference on Human Rights on the gravity of violence against women in general and in particular, of "systematic rape..." brought to the fore by the atrocities in the former Yugoslavia, the approval by the General Assembly of the Declaration on the Elimination of Violence Against Women and most specifically, the reports of the Special Rapporteur on Torture to the Human Rights Commission who described rape in detention as a form of torture. We also note that in the international humanitarian law, torture has been treated as a "grave breach" of the Geneva Conventions by the UN Human Rights Commission and by the International Committee for the Red Cross. The Statute of the International Criminal Tribunal for the Former Yugoslavia incorporates rape as a "grave breach" of the Geneva Conventions (article 2) and a violation of the laws and customs of war (article 3), and, explicitly names rape as a crime against humanity (article 5(g)).

### **C. Violations of the rights of children**

137. Children have also suffered violations of their human rights for the purposes of the repression carried out by soldiers. They have been victims of summary executions, attacks on their physical integrity, and other inhumane and degrading treatment. As a result of the wave of repression against the Haitian population, families and children have been affected. For example, the phenomenon of marronage mentioned above has led children to flee with their families and suffer the same dangers to which the adults have been exposed, putting a sudden stop to their childhood and their school routine. In some cases, minors have been left completely on their own, since their parents were murdered.

138. In its report of July 1994, the OAS/UN International Civilian Mission noted that it had received news of 51 cases of human rights violations against children between February 1 and May 31. The ages of the victims varied between five months and 17 years. One half of the cases occurred in the Port-au-Prince slum, Cité Soleil. In spite of the fact that the authors of the violations wore civilian clothing, on some occasions they were identified by the local people as members of the Armed Forces or FRAPH. Similarly, the Mission indicated it had received news of 23 cases of extrajudicial executions, deaths in suspicious circumstances, and deaths as a result of torture or cruel treatment against children.

139. The Permanent Council of the OAS, by its Resolution 630, had expressed its concern with this type of violation and requested the IACHR to give priority to the investigation of child abductions. During its visit in May 1994, the IACHR received the testimony of members of the family of a four year-old boy who had been kidnapped in March 1994. According to the statement, three armed men arrived, saying they were looking for the child's father who was a member of a political organization of young people in Cité Soleil. When they did not find the man, they raped his wife and took away the child. The child was found unharmed four days later

at a radio station.

140. Also during this visit, the Commission received information that mothers were raped in the presence of their children. In some cases, sexual violations were committed against girls aged 10 and 12 years. In the cases of arbitrary arrest, parents were detained along with their children.

#### **4. Cases of Human Rights Violations**

##### **A. Right to life**

141. As a result of the visits in Haiti carried out in May and October 1994, the IACHR observed an unprecedented increase in the number of extrajudicial executions. The Commission was able, thanks to information provided by local agencies for the defense of human rights and testimonies presented by family members of victims, to establish a large number of violations of the right to life, which is enshrined in Article 5 of the American Convention on Human Rights.

142. From January 31 to May 31, 1994, 210 cases of extrajudicial executions were recorded, according to data collected by the IACHR on the occasion of its on-site visit carried out in May. However, the OAS/UN International Civilian Mission has established 340 cases reported between February and June 1994.

143. The causes of these executions stemmed from the political situation in Haiti; the paralysis of the judicial system and the complicity of the police and the legal establishment blocked all attempts at investigation and official identification of victims; the police took no action to identify and arrest the perpetrators of these violations. The official records at the morgue were not properly maintained; families of victims generally did not take any action before the law or the police, through fear of reprisals, and were not informed, in most cases, when the body of their family member has been identified. In addition, the impossibility of identifying corpses, which often appeared severely mutilated or partly eaten by animals, made it more difficult to go to court.

144. The information gathered by the IACHR shows, however, that these executions were carried out systematically and were mainly directed at civilian groups joining together because of shared political convictions, or at those who merely were members of sectors of society considered hostile to the *de facto* government: clergymen, peasants, students, and the urban poor. Although such executions have normally been attributed to armed civilians, the information received demonstrates the link that exists between the latter and members of the Armed Forces, and this makes it possible to conclude that these are paramilitary groups acting in the manner of death squads. In other cases, the direct participation of members of the Haitian Armed Forces and members or sympathizers of Revolutionary Front for the Advancement and Progress of Haiti (FRAPH) was proved by testimonies submitted.

145. Hereunder are some of the complaints received by the Commission during the *on-site* visits it carried out in 1994:

##### **Wilner Elie**

146. An active member of the Papaye Peasant Movement (MPP), Elie was knifed to death on January 18, 1994. He was executed at his home by a group of 15-18 masked men, in the presence of his 12 children who had first been handcuffed by the assassins.

##### **Oman Desanges**

147. He was murdered on January 26, 1994. His body was found in a Port-au-Prince street two days after he was abducted, with a cord around his neck, his hands tied, his eyes crushed, his right ear missing, his tongue cut, and traces of bullet wounds and machete chops on his body.

Oman Desanges was 27 years old. He was the president of the Youth for Progress Association, which was founded in 1990. Since September 1991, he had been forced to live underground to escape the soldiers who were looking for him. In February 1992, he tried to obtain political asylum in the United States, but his request was refused. On trying to return to his house in December 1993, he was jailed for five days, during which time he was savagely beaten. His mother then succeeded in obtaining his freedom by paying 300 gourdes (\$25).

### **Mitchel and Bernard Casimir and Louis Jeanty**

148. During the night of April 26-27, 1994, a commando of heavily armed civilians wreaked terror for several hours in the area of Papo, Croix-des-Missions (north of Port-au-Prince), killing three persons, raping a young woman, and roughing up inhabitants, including an eight year-old boy.

Apparently, the attackers entered houses in small groups. In one house, the armed men killed the brothers, Mitchel (27 years old) and Bernard Casimir (20 years old) in their rooms. First, the attackers had tied up the victims' father and beaten him with the butts of their weapons, accusing the family of being responsible for the embargo.

In another house, the assaulters shot Louis Jeanty, who was trying to escape when they arrived. Jeanty was hit by a shot and fell to the ground, before he was riddled with bullets.

Throughout this operation, which lasted several hours, people remained totally without protection, since at no time did the police intervene.

### **Emmanuel Joseph, Merci Dieu Bontemps, St. Louis, and Serge Joseph**

149. On May 23, 1994, the bodies of these four political militants were found in the Cité Soleil slum. All had been murdered by gunshots.

Emmanuel Joseph, 38 years old and a member of the "Tèt Ansam Cité Soleil" Association, was gunned down by two armed individuals who entered his house, had forced him to lie on the floor, and killed him with a burst of automatic gunfire.

Mr. Merci Dieu Bontemps, 43 years old, and Mr. St. Louis, 26 years old, both members of the Young Persons Association of Cité Soleil, were each executed with a bullet in the temple.

The body of Serge Joseph, a 19 year-old member of the Alliance of Revolutionary Patriotic Democrats, was found the same day. He had been murdered in the same manner, with gunshot wounds.

Given the information received locally, it can be concluded that the same group of individuals is responsible for the four murders. They are heavily armed civilians whose exact number could not be determined.

### **Marie Auxiliatrice Decossa**

150. On June 15, 1994, in Port-au-Prince, three *attachés* and two soldiers in uniform entered the house of Marie Auxiliatrice Decossa, a militant in the "Sendika Nasyonal ti Machann-yo"

organization. After reproaching her for her activities within this workers' union, they beat her up in the presence of her three children and took her outside. As she attempted to push away one of the soldiers, he became furious and shot her in the stomach. As a result of the wounds she received, Mrs. Decossa died the following day.

### **Jean Marie Vincent**

151. During the night of August 28, 1994, Father Jean Marie Vincent was murdered by a group of heavily armed men who were waiting for him at the entrance to the residence of the Monfortain Priests in Port-au-Prince. Father Vincent had escaped two attacks in August 1986 and in August 1987. On the latter occasion, he was severely wounded, when a group of priests intervened to save his life during an attack on Aristide in the Fraiscineau area following a mass in memory of the peasants murdered during the Jean Rabel massacre.

Jean Marie Vincent had dedicated his life to the promotion of human rights and basic freedoms in Haiti. Founder of the peasant "Tet Ansam" movement of Jean Rabel, he was also a member of the "Caritas" and "Fonades" foundations for the economic development of Haiti.

### **Cases of abduction and forced disappearance**

152. During the IACHR's on-site visit in May 1994, it received much information on cases of forced disappearance and abduction. Testimonies presented to the Commission show that the procedure most used in kidnappings was as follows:

153. Victims were abducted from their homes or in the street by armed civilians operating from vehicles. It was sometimes established that the abductors wore army or police uniforms. In most cases, they beat victims when they were abducting them, handcuffed them, blindfolded them, and took them to clandestine detention locations. In those places, detainees were interrogated regarding their political or union activities. Interrogations were accompanied by beating, mistreatment and torture, failure to provide water or food.

154. In some cases, bodies of kidnapped persons were found showing signs of severe torture. This situation became more worrisome in April and May 1994, when numerous unidentified and severely mutilated corpses were regularly found in the streets of Port-au-Prince.

### **Massacre perpetrated in Raboteau**

155. Several localities in the Northern *Département* were victims of systematic military repression following the coup d'état of 1991. The well-known support of the *Département* for President Aristide and the recognized presence of militants among the people exacerbated the soldiers' hate, and they carried out raids and acts of violence throughout this period. To sum up those acts, there were cases of murder, arbitrary arrest, torture, fire that destroyed hundreds of homes, and destruction of crops and livestock.

156. Raboteau is a poor seaside slum to the north-west of the coastal town of Gonaïves. The repression against its inhabitants, who are Aristide supporters for the most part, was systematic. Political militants and members of organizations based in this slum took the habit of sleeping next to their boats to escape frequent raids by the army and FRAPH.

157. On April 18, 1994, two soldiers, accompanied by a local FRAPH leader, went to Raboteau in search of Amio Metayer, nicknamed "Cubain," whom the army suspected of being the leader of an armed group calling for the return of Aristide. The search ended with the sacking of various houses, blows and beatings inflicted on inhabitants who tried to flee, and numerous arrests.

158. Four days later, a larger number of soldiers, accompanied by FRAPH members, took control of Raboteau from early in the morning. They attacked and looted about a dozen houses and beat the inhabitants before summarily executing, on the coast or in boats, many persons who were trying to flee by sea.

159. International observers who went to the site on April 27-28, 1994 could not establish with certainty the number of victims, since many of them had been buried hurriedly the day after the massacre by prisoners under army orders.

160. The OAS/UN International Civilian Mission indicated that at least 12 persons had been murdered by shots fired by soldiers wearing tactical squad uniforms. Other reliable sources indicated that at least 28 persons had been murdered.

161. Numerous testimonies indicated that those responsible for this massacre were soldiers from the Toussaint Louverture barracks, acting under the orders of Roland Depton, Delegate of the Artibonite *Département*, and Jean Tatoune, a former political militant and a collaborator with the soldiers.

162. During 1994, the government's efforts to silence all opponents resulted in a large number of extra-judicial executions. Although the Inter-American Commission on Human Rights, in cooperation with the international observer missions and the human rights agencies *on-site* in Haiti, has compiled some figures, the exact number of these extrajudicial executions is impossible to determine.

163. The Commission is submitting a partial list of the extrajudicial executions that took place from January to June 1994. The names on the list were compiled by human rights groups working in Haiti. The list is not exhaustive, since it contains only the names of persons whose bodies could be identified and about which the human rights groups were informed.

#### January and February

##### In **Cité Soleil, Port-au-Prince**

- January 15, a woman named Jeanne, 35 years old
- January 28, 1994, journalist Michelet Dominique, 30 years old  
A man called Tizo, about 30 years old
- February 2, 1994, Chevalier Pascal, 38 years old, an immigration employee
- February 3, 1994, Charles Alexandre, 24 years old, a student  
A young man named Miguel, 25 years old
- February 10, 1994, Thermidor Josué, 28 years old  
Ernst Théodore, 26 years old
- February 12, 1994, Ti-Blanc, 34 years old
- February 20, 1994, Césavoire Jean Vernet

##### In the **interior of the country**

###### In **Solino**

- January 10, 1994, Téya Thérèse, a member of MOJEP
- January 10, 1994, Elukner Elie, a leader of the Papaye Peasant Movement

###### In **Belair**

- January 11, 1994, Rozius François

**In Martissant**

- January 22, 1994, Robert Jean

**In Laboule**

- January 31, 1994, Delance Augustin, an engineer

**In Morne Cabrit**

- February 22, 1994, Beauvais Léonard Félix

March and April**In Cité Soleil, Port-au-Prince**

- March 6, 1994, Valmel Cassamajor
- March 10, 1994, a young man, 26 years old, named Lambert
- March 11, 1994, M. Pierre
- March 17, 1994, Dietner Auguste, 34 years old
- March 25, 1994, a man called Joreks, 27 years old
- April 4, 1994, Kesner Bruno, 19 years old
- April 7, 1994, Mrs. Pétion, 46 years old
- April 14, 1994, Marie Louis
- April 16, 1994, M. Avril

**In Port-au-Prince**

- March 5, 1994, Massadiou Massillia, a primary school student
- March 15, 1994, Lukner Auguste, 40 years old
- March 20, 1994, Lamante Paul, 28 years old
- March 21, 1994, Dargil Théodore
- April 9, 1994, Fils Aimé Jasmin, 32 years old
- April 19, 1994, Lafond Harold

**In St. Michel de l'Attalaye**

- April 10, 1994, Myrlande Francius, 18 years old

**In Séguin**

- April 23, 1994, Pierre Philippe

May and June 1994**in Port-au-Prince**

- June 23, 1994, Florestal Sheila and Florius
- July 1, 1994, Paul Pierre, 40 years old

**In Artibonite**

- June 9, 1994, Fridner Jean

**In Martissant**

- July 31, 1994, a man named Alfred, 35 years old

**B. Right to personal liberty and humane treatment**

164. During the period between January and september 1994, the Haitian people continued to

give testimony of numerous human rights violations, particularly with reference to personal liberty and humane treatment as respectively reflected in articles 7 and 5 of the American Convention. As outlined in the previous special report on the situation of human rights in Haiti, following the overthrow of the democratic government of President Aristide, cases of arbitrary arrest, disappearance, mistreatment, and torture became a part of daily life.

165. The violations of these rights were closely linked to the systematic oppression carried out by the armed forces, since in all cases of detention, the victims were beaten and subjected to other physical abuses. Many of the detentions took place outside the hour stipulated by the Haitian Constitution for making arrests. Such detentions were carried out without any court authorization whatever, and in no case could persons detained appear before a judge.

166. Soldiers systematically applied themselves to the task of repressing any support that the democratic government may had, by persecuting its supporters and destroying any attempt at popular organization, regardless of whether such organization had political objectives. The loss of liberty was generally accompanied by beating, torture, death threat, and other inhumane and degrading treatment.

167. On other occasions, victims had not been deprived of their liberty, but as part of the policy maintained by the regime to terrorize people, they were sought out in their own homes, or sometimes intercepted in the street, and savagely beaten.

168. A frequent practice was to abduct a close family member of the person they were looking for, when the latter was not found at home. In many cases reported to the Commission, it was hard to obtain news of abducted family members and they were considered missing.

169. Also, arbitrary arrests were often an additional source of enrichment for soldiers or policemen, who created a sort of bargaining process in which family members of victims were obliged to pay large amounts of money to secure the freeing of detainees or at least to put an end to mistreatment.

170. During the two visits carried out by the Commission in 1994, it received a large number of complaints against violations of the right to humane treatment and personal liberty. Below, a few cases are presented by way of illustration:

#### **Gala Jean Rhoud**

171. On June 20, 1993, in Léogane, Jean Rhoud Gala was arrested by the area's police chief and detained for two days. He was tortured by the police chief and his aides during the interrogation they carried out. Gala Jean Rhoud was freed after his family paid his captors 3,000 gourdes.

#### **Jean Wichenieu**

172. He was illegally arrested by soldiers on September 14, 1993, spent seven days in prison, and had to pay a sum of 700 gourdes to be freed on September 21, 1993. Two days later, as word reached him that he would again be arrested, he was forced to flee into clandestinity with his wife and children in Borgne. On October 28 of the same year, the section chief in Au Borgne, accompanied by soldiers, had 300 houses burnt down. Numerous people were beaten up and many animals were massacred.

#### **Sony Lefort**

173. A person close to President Aristide, he was arrested on September 30, 1993 and taken to

Fort Dimanche where he remained for 15 days, during which he was severely beaten. They placed a plastic bag on his head trying to suffocate him.

On April 28, 1994, he was again detained on the Bon Repos road (Cul-de-sac, Port-au-Prince) by soldiers from the area and taken to the military post. The next day, he was transferred to the post at Croix-des-Bouquets. Sony Lefort had marks on his body that proved he had been severely beaten, and this was confirmed by other sources. His wife Bertha Romélus, accompanied by other persons, went to the Croix-des-Bouquets post to take him food and clothing. They found the detainee sitting in the guard room with his face inflamed. When he was asked what had happened, he replied that Captain Mondésir had given the order to arrest him, but he still did not know for what reason. The victim's wife then went to one of the soldiers in the guard room to ask him if she could give food and clothes to the detainee. Following a lengthy discussion with the captain, he finally agreed that the detainee could be given food and clothes, but he said the detainee had to remain in detention, since he had not finished with him. Since then, the family has not been allowed to communicate with Sony Lefort.

### **Alerte Béance**

174. An Aristide supporter along with her husband, she was abducted from her home on October 16, 1993 by armed civilian members of FRAPH when the latter did not find her husband there, as he had managed to escape through a window. Mrs. Béance was taken to Titanyen, a place known as a common grave for those executed extrajudicially, where she was brutally tortured, mutilated, and left for dead from machete chops to the face, neck, and extremities. In spite of the serious wounds received, Mrs. Béance managed to drag herself to the street, ask for help, and save her life, thanks to the medical treatment she received.

### **Saurel Avril**

175. At the beginning of May 1994, toward 10:00 p.m., the house of this committee member in the Grand-Goave shanty town was stoned for a half-hour. On May 4, three men--a soldier in olive green uniform and two men in civilian dress--came to his house to arrest him. Saurel was taken to the Grand-Goave barracks where, without being questioned, he received about 100 blows with a baton on the buttocks. They then applied the "kalot marasa," which is a method whereby they apply blows to both sides of the victim's head, often causing serious lesions on the ears, including perforation of the eardrum, infections, and loss of hearing. After being accused of setting fire to the Grand-Goave barracks on September 30, 1991, he was taken to prison.

The following day, a sergeant named Daniel went to fetch him in the cell and took him to the guard room, where he gave him more than 300 blows with a baton. The sergeant showed him a piece of paper on which were written the names of all the people's organizations in Grand-Goave and ordered him to tell him the addresses of the members of those organizations, following which he was taken back to prison. During the night of May 5-6, toward 3:00 a.m., the commander of the barracks decided to free him, warning him that he should leave town, since if he did not, he would not hesitate to kill him at the next opportunity.

### **Jean Kroutchev Célestin**

176. A member of the Coordination of Shanty Town Committees (COCOQ), he was abducted on May 14, 1994 toward 8:00 p.m. by four armed civilians in a Rocky jeep, after they had sprayed paralyzing gas in his eyes. Once he was in the jeep, the men interrogated him regarding the names of members of the Platform of Carrefour Feuilles, to which Mr. Célestin replied that he knew nothing. On arriving at their destination, they blindfolded him and tied him up in the "djak" position with a cord to lower him into an underground cell. The following day, after the cord and

the blindfold were removed, he was taken to a room where he was interrogated regarding the activities of his organization and on the financing of "Lavalas" organizations. In the process, Mr. Célestin was savagely beaten in the head and back.

Mr. Célestin spent seven days at that place and was beaten daily during interrogations. They subsequently offered him to join their group. When he refused, he was again tied up and locked in the vehicle. Mr. Célestin managed to jump out of the automobile and escape from the shots fired by his tormentors.