
Subject: Haiti Trial An Affront to Those Who Have Worked and Died For Justice

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IJDH Human Rights Alert: Haiti Assassination Trial An Affront to All Those Who Have Worked and Died for Justice

In the early hours of August 17, a sham trial in Port-au-Prince acquitted notorious Haitian rights abusers Jackson Joanis and Jodel Chamblain of the 1993 murder of businessman Antoine Izmary. Neither the judiciary nor the prosecution made even the minimum effort required by law to pursue this important case. The absence of effort combined with top Haitian officials' public support for Chamblain and his colleagues compels the conclusion that Haiti's interim government staged the trial to deflect criticism of its human rights record without alienating its military and paramilitary allies. The trial is an affront to the thousands of people who have worked and sacrificed for justice in Haiti over the last fifteen years.

I. Background

Antoine Izmary, a prominent supporter of President Aristide, was murdered on September 11, 1993, during Haiti's *de facto* military dictatorship (1991-1994). Mr. Izmary had organized a mass at Port-au-Prince's Sacre Coeur church, to commemorate the anniversary of the 1988 St. Jean Bosco Massacre. Soldiers and paramilitaries dragged Izmary out of the packed church, in full view of the Haitian and international media, the diplomatic community in Haiti, and UN/OAS Human Rights Observers, and shot him on the sidewalk outside. Both Joanis and Chamblain were convicted, *in absentia* for murder at the 1995 trial of the Izmary killing.

Jackson Joanis was a Captain in the Haitian Army, and head of the Anti-Gang police, the *de facto* period's most feared army unit. Joanis fled to the United States, but was deported back to Haiti in 2001, because of his record of political persecution. He has also been formally charged in the 1994 assassination of Fr. Jean-Marie Vincent, and was identified as a major human rights abuser in reports by Amnesty International, Human Rights Watch, the United Nations, the Organization of American States and the U.S. Government.

Jodel Chamblain was the co-founder and chief of operations of FRAPH (*Front Révolutionnaire pour l'Avancement et le Progrès Haïtiens*), Haiti's most notorious death squad. He was also convicted *in absentia* for murder in the 2000 Raboteau Massacre trial. After the 1994 return of Haiti's constitutional government, Chamblain fled to the Dominican Republic, where he trained with other paramilitaries and former soldiers in exile. He returned to Haiti in February as a leader of the insurgency that attacked towns in Haiti's north, killing police officers, destroying prisons and terrorizing the civilian population.

The insurgency helped dislodge Haiti's constitutional authorities, who were replaced by a U.S.-backed unconstitutional government. Insurgency gangs still controls large areas of Haiti, and refuse to disarm. Both the insurgency and the allied *de facto* authorities have engaged in widespread attacks against those perceived to support Haiti's constitutional government, including hundreds of killings, as well as illegal political arrests and detentions, and rapes, beatings and other torture.

Joanis and Chamblain are the only two human rights abusers from the *de facto* regime who have been pursued by the justice system, even though many others had been convicted, or escaped. These include a dozen people convicted in person at the Raboteau Massacre trial, including FRAPH leader Jean Pierre, alias Tatoune, and Army Captain Cenafils Castera, as well as three members of the *de facto* High Command convicted *in absentia* for Raboteau and deported from the U.S. Other prominent fugitives from justice include former dictator Prosper Avril, found civilly responsible for torture by a Miami court, and Henri-Robert Marc-Charles, now a top advisor in the Ministry of the Interior, both ordered imprisoned pending trial for the 1990 Piatre peasant massacre.

The justice system itself has been attacked by the insurgents, and ignored by the *de facto* authorities. In March, the judge who convicted Chamblain in the Raboteau case was beaten by men claiming to be retaliating for Chamblain's Raboteau conviction, and hospitalized. In April, Chamblain boasted to reporters that he was acting as a "judge" in Cap Haitien. On July 1, ANAMAH the Haitian national judges' association, issued a press release deploring the increase in the politicization of justice and illegal arrests over the previous four months. Later that month, when a judge in Les Cayes ordered the release of political prisoner Jacques Mathelier, the authorities transferred the prisoner to Port-au-Prince, where he remains incarcerated.

II. Pretrial Proceedings

Both Joanis and Chamblain had been convicted in *absentia* for Izmary's murder in 1995. Under Haitian law, those convicted in *absentia* have the right to a new trial, but they must be arrested immediately upon entering Haitian territory. Joanis was arrested when he arrived from the U.S., but escaped from prison on February 29, when the insurgents attacked the National Penitentiary. He turned himself in on August 9 in order to participate in the trial.

Following international criticism of the *de facto* authorities' alliances with known human rights abusers, Chamblain publicly turned himself in on April 22. At the time, Minister of Justice Bernard Gousse admitted that the surrender had been negotiated, and declared that Chamblain "had nothing to hide." This sent a signal, especially to prosecutors who are appointed by the Minister, that Mr. Gousse had already decided the outcome. A month earlier, Prime Minister Gerard Latortue praised Chamblain and his colleagues as "Freedom Fighters."

Haiti's Code of Criminal Procedure required that the cases against Chamblain and Joanis be assigned to an "Investigating Magistrate" (*Juge D'Instruction*) who reviews all relevant evidence, interrogates the suspects and any potential witnesses, and issues a formal charging document called the *ordonnance*. The Prosecutor (*Commissaire du Gouvernement*) is then entrusted with preparing the case and presenting it to the jury, including contacting witnesses and ensuring their presence at trial, and presenting all documentary evidence.

In this case, no investigating magistrate questioned Joanis after his surrender, and there is no indication that Chamblain was questioned either. Officials simply re-filed the *ordonnance* from July 1995, without adding information obtained over the last nine years from interviews with defendants or other means. They did not add any additional documentary evidence to the case file, not even the section on the Izmary killing from Haiti's Truth and Justice Commission report. Haitian and international human rights groups that are known to possess information relevant to the case or to have access to witnesses were never contacted for the investigation.

The Prosecutor made almost no effort to obtain witness testimony. Many witnesses known to have information were not contacted at all. The prosecutor claims to have sent witness notices to only eight people, and these were sent on August 13, the last weekday before trial. The law requires witness notices to be served at least three business days before trial. Witnesses were not asked whether they would be willing to testify, or if they still recalled the events of Izmary's assassination eleven years ago.

The Izmary trial was informally announced on August 12, three business days before commencing. This violated several notice requirements of the procedural code, and provided the defendants with a cause for appeal had they been found guilty. The illegally short notice also limited the ability of national and international human rights groups to monitor or criticize the proceedings.

III. The Trial

The trial began on Monday, August 16, and ended before dawn on Tuesday, August 17. Only one prosecution witness appeared, and he admitted that he was not, in fact, an eyewitness. The prosecutor was obviously unfamiliar with the file, and appeared to be going through the motions, with no attempt to present a convincing argument to the jury. Many observers and journalists left the trial in the early evening, afraid of venturing out on the capitol's streets after dark.

Amnesty International referred to the trial as "an insult to justice" and a "mockery."

IV. The Next Step

Both Chamblain and Joanis remain in prison, awaiting trials on other charges. Chamblain's lawyer predicted a new trial on his *in absentia* Raboteau conviction within a month. The Minister of Justice predicted that Chamblain may be pardoned, even if he is convicted again. Joanis has been formally charged for the 1994 killing of Fr. Jean-Marie Vincent, but that trial has not been announced.

V. The Fight For Justice in Haiti

Haiti's Truth and Justice Commission estimated that 5,000 people were killed along with Antoine Izmerly during the 1991-1994 dictatorship, for supporting justice and democracy. The Director of the Port-au-Prince morgue reported disposing of over 1,000 bodies in the month after the departure of Haiti's constitutional government this year, many of them bearing the signs of torture and execution.

During more than nine years of elected governments in Haiti (1994-2004), thousands of people worked tirelessly for justice. Victims who survived and the families of those who did not survive organized to pressure the justice system. They marched, protested, kept vigils, wrote letters, sang songs and told and retold their stories. Others, from Haiti and abroad, participated within the structures: they created, ran and attended the Judicial and Police Academies that trained a new generation of professionals. Still others documented abuses for the Truth and Justice Commission, the United Nations, the Organization of American States and for human rights organizations in Haiti and abroad. Many put their lives and reputations on the line, by participating in prominent trials as witnesses, complainants, judges, prosecutors, lawyers and jurors.

The dividends from these sacrifices and efforts were less than most had hoped for. Progress on prominent cases was frustratingly slow, and some controversial cases stopped completely. But justice was served under the democratic governments: the better trained prosecutors, judges and police officers did their jobs imperfectly, but more justly than anyone had before in Haiti. Two prominent human rights trials in the year 2000 rose to international standards, and exceeded any complex trial in Haiti before or since. Investigations into peasant massacres and political rapes proceeded slowly, but proceeded. Each successful trial built upon its predecessors, and set a new, higher standard for justice in Haiti.

Today's trial of Chamblain and Joanis indicates a full return to Haiti's historical injustice, and the elimination of the foundations erected with so much sweat and blood. While political prisoners with no evidence or accusations in their case files continue to fill the National Penitentiary, convicted murderers are acquitted in a charade trial, their files chock full of evidence but un-opened.

History shows that Haitians will not accept this return to injustice, and will keep fighting against it. But they cannot prevail on their own, and history shows that the international community is as likely to acquiesce in the new order as it is to vigorously protest. It is therefore incumbent on those of us who can safely advocate for human rights in Haiti to do so persistently. Failing to speak out betrays the sacrifices already made, and encourages future atrocities.

For more information:

WWW.IJDH.ORG (reports on current human rights conditions in Haiti, legal analyses)

WWW.AMNESTY.ORG (reports on current human rights conditions in Haiti, including press releases following the trial and Chamblain's March arrest)

WWW.NCHR.ORG (press releases from Haiti (8/12/04) and New York (8/13/04) regarding the trial of Chamblain)

**and Joanis).
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