

# **Reversing Post-Raboteau Massacre Trial Impunity**

Briefing Paper on Twenty Years of Eroding Commitments to Justice and the Opportunity to Return to Accountability in Haiti



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## I. Intro

In November of this year, it will have been 20 years since Haiti successfully prosecuted its most complex human rights case: after five years of community advocacy, investigations, and pretrial proceedings; six weeks of trial that included uses of expert testimony and DNA evidence; and unprecedented access for both victims and the public, 53 men, most of them members of the Haitian military and a government-affiliated paramilitary group (FRAPH) were convicted for their roles in the violent Raboteau Massacre. A diverse jury<sup>1</sup> found 16 of the 22 men tried in person guilty. The judge convicted another 37 men *in absentia* a week later. Victims, who had intervened as civil parties were awarded 1 billion Haitian gourdes (approximately U.S. \$43 million at the time) in damages.

The Raboteau Massacre Trial (the “Trial”) was celebrated as a commitment by the government of Haiti to ending impunity.<sup>2</sup> It was the first case to bring Haiti’s military leadership to justice.<sup>3</sup> It was also momentous because it embodied the dividends of a concerted investment in systematic improvements to Haiti’s justice sector. The Trial showed that meaningful accountability for past abuses was possible in a Haitian court of law.

In the two decades since, much of that promise has been squandered. In 2005, Haiti’s highest court reversed the jury part of the Raboteau convictions in a judgment that has been widely criticized as legally improper and politically motivated.<sup>4</sup> Subsequent government failure to hold accountable convicted defendants who had been tried *in absentia* but returned to Haiti not only further eroded the Raboteau promise of accountability, but also signaled a serious dismantling of the justice sector’s capacity and credibility, laboriously built up in the lead-up to the Trial.

The recent deportation of one of the main actors responsible for the Raboteau Massacre, Emmanuel “Toto” Constant, to Haiti offers a new opportunity for the government of Haiti to re-examine the arc of the Raboteau Massacre Trial history and – hopefully – bend it towards justice.<sup>5</sup> Constant and any other *in absentia* Raboteau defendants who have returned to Haiti, regardless of position, should be arrested and brought to justice. To do otherwise is not only contrary to the rule of law but would also betray the Raboteau promise of Haitian justice that is fair and independent.

This briefing paper proceeds by providing a historical overview of the *de facto* military regime that perpetrated, among other atrocities, the Raboteau Massacre; the resulting proceedings and Trial; and the subsequent dismantling of the tangible justice that the Trial had delivered to the people of Haiti. The briefing concludes by identifying actions that the government of Haiti should undertake to reverse that trajectory and return and rebuild Haiti’s demonstrated capacity to deliver accountability to its citizens.

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<sup>1</sup> See *infra* note 37 and associated text.

<sup>2</sup> See, e.g., Press Release of Adama Dieng, United Nations Independent Expert on Haiti, *Raboteau Verdict in Haiti “A Landmark In Fight Against Impunity,” But Case Not Yet Finished* (2000), <http://www.ijdh.org/2000/11/archive/institute-for-justice-democracy-in-haiti-home-368/> (appending communique of the UN International Civilian Support Mission in Haiti (“MICAH”)); see further *infra* Section III(b).

<sup>3</sup> See Brian Concannon, Jr., *Justice for Haiti: The Raboteau Trial*, Excerpt From: “International Legal Developments in Review: 2000” in *The International Lawyer*, Vol. 35, No. 2 (2001), <http://www.ijdh.org/wp-content/uploads/2020/05/The-Raboteau-Trial-International-Lawyer.pdf> [Concannon 2001].

<sup>4</sup> See *infra* Section IV(a).

<sup>5</sup> Cf., e.g., Speech of Dr. Martin Luther King Jr. in Montgomery, Alabama (Mar. 25, 1965).

## II. *The Cédras Regime: FADH, FRAPH & the Raboteau Massacre*

In September of 1991, eight months into the presidency of Jean-Bertrand Aristide, who had been elected in Haiti's first democratic election,<sup>6</sup> a group of Haitian military officers with backing from some of the country's elite,<sup>7</sup> staged a coup and established a military dictatorship under Lieutenant General Raoul Cédras. Opposition to the coup was immediate and persistent, which led the *junta* to establish a paramilitary organization called the Front for the Advancement and Progress of Haiti ("FRAPH")<sup>8</sup> to assist the Haitian army ("FADH")<sup>9</sup> in suppressing dissent.<sup>10</sup>

The Cédras regime's three years in power<sup>11</sup> were marked by extrajudicial killings, rape and other violence against women, torture, forced disappearances, arbitrary arrests and detention, and the flight from the country of hundreds of thousands of Haitians, often in crowded, flimsy boats.<sup>12</sup> It is estimated that the FADH and FRAPH, jointly acting as the fists of the regime's political violence, killed between 3,000 and 4,000 Haitians.<sup>13</sup> Investigating experts would ultimately find that the FADH had functioned as a "criminal

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<sup>6</sup> Jake Johnston, *Meet the New Haitian Military*, *Haïti Liberté* (Mar. 21, 2018), <https://haitiliberte.com/meet-the-new-haitian-military/>.

<sup>7</sup> *Id.* There are speculations that the U.S. Central Intelligence Agency may have supported the coup. *See id.* For example, extensive reporting asserts that the Agency paid at least one of the coup's leaders, Emmanuel Constant, *see infra* Section IV(e), as an informant. *See, e.g.,* R. Jeffrey Smith, *Haitian Paramilitary Chief Spied for Cia, Sources Say*, *Washington Post* (Oct. 7, 1994), <https://www.washingtonpost.com/archive/politics/1994/10/07/haitian-paramilitary-chief-spied-for-cia-sources-say/5832d9e5-8ce2-4a26-bcad-23039c317e4a/>; Tim Weiner, *Haitian Ex-Paramilitary Leader Confirms C.I.A. Relationship*, *New York Times* (Dec. 3, 1995), <https://www.nytimes.com/1995/12/03/world/haitian-ex-paramilitary-leader-confirms-cia-relationship.html>. At a minimum, the United States played a disruptive role with respect to the Trial: it removed approximately 160,000 pages of FADH and FRAPH documents from Haiti and failed to return them for use in the Trial, in spite of broad-based pressure to do so. *See, e.g.,* Concannon 2001.

<sup>8</sup> In Haitian Creole and French, the acronym also recalls the word meaning "blow" or "hit."

<sup>9</sup> In French, the army is referred to as *Forces Armées d'Haiti*, acronymed as FADH or FAD'H.

<sup>10</sup> *See, e.g.,* G. Dunkel, *Civil suit exposes U.S. role in Haitian massacres*, *Workers World* (June 1, 2008), [https://www.workers.org/2008/world/haiti\\_0605/](https://www.workers.org/2008/world/haiti_0605/); Jake Johnston, *Meet the New Haitian Military*, *Haïti Liberté* (Mar. 21, 2018), <https://haitiliberte.com/meet-the-new-haitian-military/>; United Nations, Summary of AG-068 United Nations Political and Peacekeeping Missions in Haiti (1993-2001), p. 183, <https://search.archives.un.org/downloads/united-nations-political-and-peacekeeping-missions-in-haiti-1993-2001.pdf>; Human Rights Watch, *Haiti Rights Developments* (1995), <https://www.hrw.org/reports/1995/WR95/AMERICAS-07.htm> (reporting that "[t]he 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... to neutralize opposition to the regime.").

<sup>11</sup> One of the best resources for understanding the atrocities of the regime, including the Raboteau Massacre, is the Final Report of Haiti's National Commission of Truth and Justice, *Se M Pa Rele* ("If I Don't Cry Out") (Feb. 5, 1996), available at [http://www.ijdh.org/wp-content/uploads/2020/05/Ha%C3%AFti\\_Rapport-de-la-Commission-Nationale-V%C3%A9rit%C3%A9-et-Justice.pdf](http://www.ijdh.org/wp-content/uploads/2020/05/Ha%C3%AFti_Rapport-de-la-Commission-Nationale-V%C3%A9rit%C3%A9-et-Justice.pdf).

<sup>12</sup> *See, e.g.,* Human Rights Watch, *Haiti Rights Developments* (1995), <https://www.hrw.org/reports/1995/WR95/AMERICAS-07.htm>; Beverly Bell, *Haitian Women's Stories of Survival and Resistance*, Cornell University Press (2013), available at <https://books.google.com/books?id=LWw1AAAAQBAJ&lpg=PP1&pg=PP1#v=onepage&q&f=false> ("Hundreds of thousands of others, in search of a more complete escape, chose to slip into flimsy wooden boats in the middle of the night.").

<sup>13</sup> *See, e.g.,* Human Rights Watch, *Haiti Rights Developments* (1995), <https://www.hrw.org/reports/1995/WR95/AMERICAS-07.htm>.

enterprise” under the regime and “was organized for repressing civilians, rather than for any legitimate military purpose.”<sup>14</sup>

Among the regime’s most notorious – though representative – crimes was the Raboteau Massacre, described by observers as a “massacre of floating corpses” for its brutal aftermath.<sup>15</sup> Raboteau was a poor, seaside neighborhood of Gonaïves, which was among the strongholds of opposition to the military junta,<sup>16</sup> with a deep history of effective political activism.<sup>17</sup> As retribution for the oppositional activities emanating from Raboteau, FADH troops and FRAPH paramilitaries methodically and brutally attacked the neighborhood on April 18 and 22 of 1994. Dozens of individuals were assaulted, tortured, arrested, or imprisoned; homes were ransacked and destroyed; thousands fled their homes. The true death toll is not known because the perpetrators prevented families from reclaiming bodies, some of which were eaten by animals or floated out to sea. Ultimately, the prosecution would determine that there was enough evidence to substantiate eight murders, although the actual number is almost certainly far higher.<sup>18</sup>

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<sup>14</sup> See Colonel Horacio P. Ballester & Colonel Jose Luis Garcia, *Responsabilités hiérarchiques des Forces Armées d’Haïti dans le déroulement des opérations survenues du 18 au 22 avril 1994 à Raboteau (Gonaïves)* (1999), p. 26, [https://drive.google.com/file/d/1OUh64jcDr6pI5QStVU6cGC--V\\_J0om1F/view](https://drive.google.com/file/d/1OUh64jcDr6pI5QStVU6cGC--V_J0om1F/view) (observing that the Raboteau tragedy can be seen as the conduct of a collective “criminal enterprise”); *id.* at 27 (describing the system of the regime’s repression as one implemented by the Armed Forces) (informal translations from French); see also Final Report of Haiti’s National Commission of Truth and Justice, *Se M Pa Rele* (“If I Don’t Cry Out”) (Feb. 5, 1996), p. 154, available at [http://www.ijdh.org/wp-content/uploads/2020/05/Ha%C3%AFti\\_Rapport-de-la-Commission-Nationale-V%C3%A9rit%C3%A9-et-Justice.pdf](http://www.ijdh.org/wp-content/uploads/2020/05/Ha%C3%AFti_Rapport-de-la-Commission-Nationale-V%C3%A9rit%C3%A9-et-Justice.pdf) (“The events of April 1994 in Raboteau revealed a high degree of preparation, which showed that the military and their accomplices (FRAPH and others) hadn’t neglected any detail for achieving their aims.”) (informal translation from French); Concannon 2001.

<sup>15</sup> See John Donnelly, *Justice Delayed: Showdown Looms in Haiti—former Boston Lawyer to Try Ex-officials in 1994 Massacre*, Boston Globe (June 11, 2000), <http://www.ijdh.org/2000/06/archive/institute-for-justice-democracy-in-haiti-home-371/>; Human Rights Watch, *Haiti: Recycled Soldiers and Paramilitaries on the March* (2004), <https://www.hrw.org/report/2004/02/27/haiti-recycled-soldiers-and-paramilitaries-march> (referring to the massacre as the regime’s “most notorious” attack).

<sup>16</sup> See, e.g., Concannon 2001 (describing the people of Raboteau as actively participating in non-violent resistance, including by hiding refugees, secretly organizing, circulating literature, and organizing demonstrations); G. Dunkel, *Civil suit exposes U.S. role in Haitian massacres*, Workers World (June 1, 2008), [https://www.workers.org/2008/world/haiti\\_0605/](https://www.workers.org/2008/world/haiti_0605/); Christine Cynn, “*Nou Mande Jistis! (We Demand Justice!)*”: *Reconstituting Community and Victimhood in Raboteau, Haiti*, Women’s Studies Quarterly, Vol. 36, No. 1/2 (2008), pp. 45-46 (“Gonaïve [sic], where Raboteau is situated, . . . was the only place where the people and popular organizations had the courage to demonstrate publicly.”).

<sup>17</sup> The Raboteau neighborhood had also sparked the 1985 nationwide protests that eventually led to the ouster of the Duvalier regime. See, e.g., Terry F. Bus, *Haiti in the Balance: Why Foreign Aid Has Failed and What We Can Do About It*, Brookings Institution Press (2009), p. 44, available at [https://books.google.com/books?id=AbP8m\\_eMXn4C&lpg=PP1&pg=PA44#v=onepage&q&f=false](https://books.google.com/books?id=AbP8m_eMXn4C&lpg=PP1&pg=PA44#v=onepage&q&f=false); Concannon 2001.

<sup>18</sup> See, e.g., Amnesty International, *Haiti Perpetrators of past abuses threaten human rights and the reestablishment of the rule of law* (2004), <https://www.amnesty.org/download/Documents/92000/amr360132004en.pdf> (estimating the death toll at 20); Ken Bresler, *If You Are Not Corrupt, Arrest the Criminals: Prosecuting Human Rights Violators in Haiti*, Harvard (Sept. 2003), <http://www.ijdh.org/wp-content/uploads/2011/03/KSG-Haiti-Case-study-Sept-2003.pdf> [Harvard Case Study] (quoting leading BAI lawyer on the case, subsequent director and current board member of the Institute for Justice & Democracy in Haiti (IJDH), Brian Concannon, Jr. as estimating the death toll to fall somewhere between 10 and 20); Jake Johnston, *Meet the New Haitian Military*, Haïti Liberté (Mar. 21, 2018), <https://haitiliberte.com/meet-the-new-haitian-military/>; G. Dunkel, *Civil suit exposes U.S. role in Haitian massacres*, Workers World (June 1, 2008), [https://www.workers.org/2008/world/haiti\\_0605/](https://www.workers.org/2008/world/haiti_0605/) (stating “total number of people who were killed [in Raboteau] is unknown because bodies were thrown into the sea or buried in unmarked graves.”); Human Rights Watch, *Haiti: Recycled Soldiers and Paramilitaries on the March* (2004),

### III. *The Raboteau Massacre Trial: A Promise of Accountability*

In September of 1994, having attempted expansive sanctions and aborted a unilateral intervention,<sup>19</sup> the United States, backed by the United Nations, helped to negotiate an exit by the Cédras regime and to restore President Aristide to power. The Aristide government agreed to grant a limited amnesty: applicable to the 1991 coup itself, but not to the three years of abuses that followed in its wake.<sup>20</sup>

#### (a) *Grassroots Pressure; Government Commitment*

Before a trial could take place, an enormous grassroots effort by the regime's survivors, supported by targeted government policies, created an expectation that the government of Haiti would deliver accountability for past abuses through a formal process and laid a foundation for ensuring that the resulting process conformed to the rule of law. Government policies included the creation of a specialized law office (the *Bureau des Avocats Internationaux* ("BAI")) to represent survivors and a government coordination unit to support them, use of a special police unit for investigating and finding perpetrators, and concerted efforts to address any justice sector breaches.<sup>21</sup> Complementary investments in Haiti's justice system, ranging from infrastructure to skills-trainings, further bolstered or created the tools necessary for the Haitian government to hold accountable senior military officials responsible for the Raboteau Massacre.<sup>22</sup> It took five years of such grassroots organizing, pretrial proceedings, successive investments in judicial capacity, and persistent advocacy to get to trial.<sup>23</sup> But the result was actual, meaningful justice.

#### (b) *The Trial*

The Raboteau Massacre Trial took six weeks and ended with four hours of jury deliberations on November 9, 2000. Of the 22 individuals who had appeared in person, the jury acquitted six and found the rest guilty (twelve of premeditated murder, accompanied by life sentences; and the rest of lesser offenses with sentences ranging from four to nine years). A week later, the judge convicted another 37 defendants *in absentia*, sentencing them to life imprisonment and hard labor for murder.<sup>24</sup> The latter

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<https://www.hrw.org/report/2004/02/27/haiti-recycled-soldiers-and-paramilitaries-march> (estimating at least 15 people were killed); *see also* Concannon 2001 (offering a comprehensive description of the attack); Final Report of Haiti's National Commission of Truth and Justice, *Se M Pa Rele* ("If I Don't Cry Out") (Feb. 5, 1996), pp. 154 et seq., available at [http://www.ijdh.org/wp-content/uploads/2020/05/Ha%C3%AFti\\_Rapport-de-la-Commission-Nationale-V%C3%A9rit%C3%A9-et-Justice.pdf](http://www.ijdh.org/wp-content/uploads/2020/05/Ha%C3%AFti_Rapport-de-la-Commission-Nationale-V%C3%A9rit%C3%A9-et-Justice.pdf).

<sup>19</sup> *See, e.g.*, David Grann, *Giving "The Devil" His Due*, Atlantic (June 2001), <https://www.theatlantic.com/magazine/archive/2001/06/giving-the-devil-his-due/302234/>.

<sup>20</sup> *See, e.g.*, Jake Johnston, *Meet the New Haitian Military*, Haïti Liberté (Mar. 21, 2018), <https://haitiliberte.com/meet-the-new-haitian-military/>; Harvard Case Study.

<sup>21</sup> *See, e.g.*, Concannon 2001 (describing early efforts to enable accountability for the Raboteau Massacre, including remarkable investigative work and the government's responsible stewardship through, for example, replacing responsible officials and faulty infrastructure when a defendant escaped); David Gonzales, *So That Tyrants Won't Rest, Haitians Keep a Vigil*, New York Times (Aug. 2, 2000), [https://web.archive.org/web/20120531164205/http://ijdh.org/articles/article\\_raboteau-7.php](https://web.archive.org/web/20120531164205/http://ijdh.org/articles/article_raboteau-7.php).

<sup>22</sup> The Raboteau Massacre became the primary focal point for prosecuting Cédras regime officials for their abuses because it was relatively well documented, thanks to the extraordinary efforts of an early investigator and the persistent organizing of the Raboteau community. *See* Concannon 2001; Harvard Case Study.

<sup>23</sup> A comprehensive description of such proceedings and the trial itself may be found in, e.g., Concannon 2001; Harvard Case Study.

<sup>24</sup> *See, e.g.*, Concannon 2001; *see also* Raboteau Massacre Trial Verdict List (Unofficial), <https://www.ijdh.org/2010/01/archive/institute-for-justice-democracy-in-haiti-home-369/>. *See also* Press Release,

group of defendants included the entire FADH high command and the heads of FRAPH,<sup>25</sup> all of whom had fled Haiti and were therefore convicted *in absentia*. Under Haitian law, any defendants convicted *in absentia* must be arrested upon return to Haiti and may either accept the verdict rendered against them or demand a new trial.<sup>26</sup> In the civil portion of the case,<sup>27</sup> victims were awarded millions of dollars in damages, to be paid by the convicted defendants.

A full description of the Trial is beyond the scope of this briefing and has been extensively documented elsewhere.<sup>28</sup> However, the following features are noteworthy as demonstrations of the proven capacity of Haiti's courts, to deliver meaningful justice in a complex case.

- **Complex litigation** | Haiti's justice system had been ravaged by the Cédras years (as well as the Duvalier years before them), which worsened already existing weaknesses.<sup>29</sup> Nevertheless, with investment in skills and external support, the court of Gonaïves was able to conduct what were widely judged to be fair proceedings, in spite of the case's complexity, large number of defendants (59), and an unprecedented number of witnesses.<sup>30</sup> In addition, the Trial saw the introduction to Haiti of litigation tools used to bring in and examine testimony in a way that expanded who might be held accountable. For example, for the first time in Haitian criminal proceedings, the prosecution relied on DNA evidence and brought in forensic and genetic experts who were able to demonstrate identity in spite of the perpetrators' interference with families reclaiming their loved ones.<sup>31</sup> Similarly, experts were introduced to establish the responsibility of senior leaders through accepted theories of accomplice and command responsibility liability for

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IJDH, *Le BAI Dénonce la Nomination d'un Ex-Tortionnaire du coup d'état sanglant du 30 septembre 1991 au soi-disant Haut Etat-Major des Forces Armées d'Haiti* (Mar. 2018), <http://www.ijdh.org/2018/03/topics/law-justice/le-bai-denonce-la-nomination-dun-ex-tortionnaire-du-coup-detat-sanglant-du-30-septembre-1991-dans-le-soi-disant-haut-etat-major-des-forces-armees-dhaiti/> (English translation available at [http://www.ijdh.org/wp-content/uploads/2018/03/BAI\\_IDJH\\_Press\\_Release\\_ENG-Version.pdf](http://www.ijdh.org/wp-content/uploads/2018/03/BAI_IDJH_Press_Release_ENG-Version.pdf)) [2018 BAI Press Release].

<sup>25</sup> See Concannon 2001.

<sup>26</sup> See Letter of the BAI to the Haitian Ministry of Justice and Public Security (May 6, 2020), <http://www.ijdh.org/wp-content/uploads/2020/05/lettre-au-Ministre-de-facto-de-la-justice-et-de-la-securite-publique.pdf> (English translation available at <http://www.ijdh.org/wp-content/uploads/2020/05/lettre-au-Ministre-de-facto-de-la-justice-et-de-la-securite-publiqueEN-2.pdf>) [2020 BAI Letter]. Another Haitian human rights organization subsequently joined onto BAI's letter. See Joint Open Letter of BAI and the National Network for the Defense of Human Rights (*le Réseau National de Défense des Droits Humains*, RNDDH) to the Haitian Ministry of Justice and Public Security (May 16, 2020), <http://www.ijdh.org/wp-content/uploads/2020/05/Letter-of-BAI-and-RNDDH-to-the-MoJ-05.16.20.pdf>.

<sup>27</sup> Under Haitian law and jurisprudence, victims may intervene as "civil parties" in criminal proceedings. Victims' counsel may to a large extent participate in the proceedings, including by proposing questions to the questioning judge. See, e.g., Concannon 2001.

<sup>28</sup> For an extensive description, see, e.g., Harvard Case Study; Concannon 2001; see also Radio Haiti Archives, Duke University, [https://repository.duke.edu/dc/radiohaiti?utf8=✓&f%5Bcommon\\_model\\_name%5D%5B%5D=Item&q=Raboteau&search\\_field=all\\_fields](https://repository.duke.edu/dc/radiohaiti?utf8=✓&f%5Bcommon_model_name%5D%5B%5D=Item&q=Raboteau&search_field=all_fields) (archiving trial recordings and reporting around the Trial); Press Release of Adama Dieng, United Nations Independent Expert on Haiti, *Raboteau Verdict in Haiti "A Landmark In Fight Against Impunity," But Case Not Yet Finished* (2000), <http://www.ijdh.org/2000/11/archive/institute-for-justice-democracy-in-haiti-home-368/> (appending MICAH communique).

<sup>29</sup> Concannon 2001 ("Haiti's justice system, never a model of fairness, was ravaged by the thirty-year dictatorship of François and Jean-Claude Duvalier (1957-1986), and again during the brutal de facto [Cédras] regime.").

<sup>30</sup> *Id.*

<sup>31</sup> See *supra* Section II.

acts they could not be linked to physically – a critical step to ending impunity for those who direct or otherwise enable abuses without being physically present.<sup>32</sup> Finally, the prosecution was able to use a variety of documents, including ones seized from army archives, to confront and disprove alleged alibis proffered by the defense.<sup>33</sup>

- **Procedural fairness to the defense** | A total of ten highly regarded lawyers actively represented the 22 in-person defendants,<sup>34</sup> all of whom also benefited from adherence to often-ignored legal requirements like bilingual warrants.<sup>35</sup> Notwithstanding popular anger against the accused and frustrations regarding delays, all remained unharmed and six were ultimately acquitted, demonstrating the jury's respect for fact-finding and applicable law. Both national and international observers agreed that the Trial had been fair to the accused and the victims alike.<sup>36</sup>
- **Diverse jury** | A successful advocacy effort to create juries that better reflect the Haitian population resulted in government actions to update and democratize the potential jury pool for the Trial.<sup>37</sup>
- **Inclusion of victims and investment in public credibility** | Finally, the Trial not only represented and demonstrated tremendous capacity improvements in Haiti's judicial sector, but also actively contributed to building its credibility with the Haitian people. Victims were afforded a meaningful opportunity to observe and participate, including through counsel (BAI), who were able to actively engage in every stage of the pretrial and trial proceedings, such as by questioning witnesses (albeit through the mediation of the presiding judge). Equally importantly, the Trial offered an unprecedented opportunity for the Haitian people to observe judicial proceedings: the hearings were broadcast in their entirety on Haitian radio, and in large part on television, both in Haitian Creole, an unusual and participatory measure that enabled the majority of Haitians who do not speak French – the language of court proceedings – to follow the Trial.<sup>38</sup>

In short, as observed by the UN, the Trial “constitute[d] a significant step in the fight against the impunity which affects all Haitian people, and [was] proof that the Haitian judicial system is able to effectively judge the authors of crimes and other offences that contravene the law and violate human rights” while “respect[ing] the guarantees laid down in the 1987 Constitution as well as in the international treaties to

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<sup>32</sup> See Concannon 2001 (describing expert testimony of the former head of MICIVIH, the U.N./O.A.S. human rights mission to Haiti, who concluded that national leaders had planned and covered up the Raboteau Massacre, and two Argentine military experts had investigated the Raboteau Massacre at the court's request in 1999).

<sup>33</sup> Concannon 2001.

<sup>34</sup> See Brian Concannon Jr., *Justice Dodged, Part II.*, Equipo Nizkor & Derechos Human Rights (June 2005), <http://www.derechos.org/nizkor/haiti/doc/brian.html> (noting the “aggressive” strategy of defense counsel, who actively challenged both trial procedures and the evidence presented throughout the trial).

<sup>35</sup> Concannon 2001. Under Haitian law, *in absentia* defendants, having failed to appear may not have counsel, although they may have their family or friends explain their absence. See Haitian Code of Criminal Procedure, Art. 369.

<sup>36</sup> See, e.g., Concannon 2001; Brian Concannon Jr., *Justice Dodged, Part II.*, Equipo Nizkor & Derechos Human Rights (June 2005), <http://www.derechos.org/nizkor/haiti/doc/brian.html>.

<sup>37</sup> Harvard Case Study (“The justice of the peace culled the names of dead people from the rolls and added eligible lower-class citizens...”).

<sup>38</sup> See *id.*; see also Radio Haiti Archives, Duke University, [https://repository.duke.edu/dc/radiohaiti?utf8=%E2%9C%93&f%5Bcommon\\_model\\_name\\_ssi%5D%5B%5D=Item&q=Raboteau&search\\_field=all\\_fields](https://repository.duke.edu/dc/radiohaiti?utf8=%E2%9C%93&f%5Bcommon_model_name_ssi%5D%5B%5D=Item&q=Raboteau&search_field=all_fields).

which Haiti is a signatory.”<sup>39</sup> It was a substantiated promise of systematic accountability under Haitian law and in Haitian courts.

#### ***IV. Slide into Impunity: A Promise Betrayed***

The last two decades witnessed successive Haitian governments disappoint that promise, both by declining to enforce the specific convictions of the Gonaïves court and by failing to sustain and nurture the judicial capacity and credibility improvements achieved through the Trial. An early symbolic moment came in August of 2002, when a massive jailbreak in Gonaïves resulted in a Raboteau defendant with a life sentence escaping and the Gonaïves courthouse, where the trial took place, getting partially burned by resulting mobs.<sup>40</sup> In 2004, another military coup yet again displaced the democratically-elected government from power. In the accompanying chaos, all of the Raboteau defendants who had been in prison escaped.<sup>41</sup> Human rights observers specifically expressed concern regarding escaped or returned Raboteau defendants and called on the UN Multinational Interim Force to guarantee that such individuals be taken into custody and brought before the Haitian justice system.<sup>42</sup> No such action followed. The below inflection points in this pattern of resurgent impunity are especially significant to the present day.

##### *(a) 2005 Vacatur of Raboteau Jury Verdict by the Cour de Cassation*

On April 21, 2005, Haiti’s highest court – the *Cour de Cassation* – overturned the convictions of all Raboteau defendants who had been tried in person and were thus convicted by a jury during the Trial.<sup>43</sup> The Court held that the case should not have been tried by a jury because a 1928 law proscribed juries for trials of multiple, related crimes, notwithstanding Article 50 of the 1987 Constitution that requires juries for “blood felonies,” which in Haitian practice include murder.

The vacatur decision was widely condemned as inconsistent with Haiti’s Constitution and politically motivated.<sup>44</sup> First, it purported to effectively invalidate a constitutional provision, notwithstanding the Constitution’s supremacy over national law. Second, the reversal was procedurally dubious, as the trial

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<sup>39</sup> Press Release of Adama Dieng, United Nations Independent Expert on Haiti, *Raboteau Verdict in Haiti “A Landmark In Fight Against Impunity,” But Case Not Yet Finished* (2000) & appended MICAH communique, <http://www.ijdh.org/2000/11/archive/institute-for-justice-democracy-in-haiti-home-368/>.

<sup>40</sup> See Harvard Case Study.

<sup>41</sup> Amnesty International, *Haiti: Perpetrators of past abuses threaten human rights and the reestablishment of the rule of law* (2004), <https://www.amnesty.org/download/Documents/92000/amr360132004en.pdf>.

<sup>42</sup> *Id.*

<sup>43</sup> Decision of the *Cour de Cassation*, 2d Section, Appeal of Castera Cenafils, et al., May 3, 2005, available at <http://www.ijdh.org/pdf/Raboteau.pdf>; see also, e.g., Brian Concannon Jr., *Justice Dodged, Part II.*, Equipo Nizkor & Derechos Human Rights (June 2005), <http://www.derechos.org/nizkor/haiti/doc/brian.html> (providing a procedural context for the decision and strongly criticizing it).

<sup>44</sup> See, e.g., Amnesty International, *Haiti: Obliterating justice, overturning of sentences for Raboteau massacre by Supreme Court is a huge step backwards* (May 26, 2005), <https://www.amnesty.org/download/Documents/80000/amr360062005en.pdf> (expressing concern that the ruling contradicts the Constitution and was politically motivated); Letter of the Association of the Bar of the City of New York to the Prime Minister and the Minister of Justice and Public Security (Aug. 12, 2005), available at <https://drive.google.com/file/d/1UVRkbVnrdIkcBoWP9rq1mLv1TExT64bQ/view> (condemning the decision as violating both Haiti’s Constitution and international law); see also Mario Joseph & Brian Concannon Jr., *Memorandum Re: Analysis of Cour de Cassation Decision Vacating Raboteau Massacre Convictions*, IJDH (June 6, 2005), <http://www.ijdh.org/wp-content/uploads/2010/01/Memo-Brian-Legal-Analysis.pdf> (providing a comprehensive analysis of the legal flaws in the reversal); Brian Concannon Jr., *Justice Dodged, Part II.*, Equipo Nizkor & Derechos Human Rights (June 2005), <http://www.derechos.org/nizkor/haiti/doc/brian.html>.

court's determination that a jury was proper was approved by both the Court of Appeal and the *Cour de Cassation* itself at the time of the Trial and was never challenged by the defendants.<sup>45</sup> Finally, although the *de facto* government denied exerting any influence over the decision,<sup>46</sup> it is apparent from the procedural history of the judgment that it was politically motivated. The jury-convicted Raboteau defendants appealed their conviction immediately on a variety of grounds. None called into question whether a trial by jury had been proper. By early 2001, the matter was fully briefed by all sides and ready for consideration by the *Cour de Cassation*. The court then failed to rule on the appeal for three years, in spite of concerted advocacy campaigns urging it to do so. By March 1, 2004, the President of the Court had been installed by the coup as the interim president of Haiti and all of the Raboteau defendants who had been incarcerated were no longer in prison, most having escaped. It was then that the Court, in spite of the missing defendants and the social upheaval, finally ruled on the appeal, vacating the jury conviction on grounds never raised by the defendants themselves in spite of zealous representation.<sup>47</sup>

The decision thus represented a political and institutional departure from the rule of law and commitment to ending impunity: the State actors would once again politicize the judiciary to step in and protect the powerful from being held accountable for unlawful actions. More troubling still, the reversal's supporters apparently hailed defendants who had been convicted of horrific crimes as "freedom fighters."<sup>48</sup> As an observer remarked at the time, "[i]n a country in which the poor have been killed and brutalized with impunity for centuries, Raboteau was perhaps the only time that justice was achieved after a massacre,

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<sup>45</sup> See Brian Concannon Jr., *Justice Dodged, Part II.*, Equipo Nizkor & Derechos Human Rights (June 2005), <http://www.derechos.org/nizkor/haiti/doc/brian.html> (noting that no defendants objected to the determination either during the trial or in any of their three appeals). See also Sur le Tribunal Compétent avec ou Assistance de Jury, Ordonnance (signed by Jean Sénat Fleury, Juge d'Instruction), at 150-151, available at <http://www.ijdh.org/rabord.pdf>.

<sup>46</sup> Reed Lindsay, *Raboteau Massacre Trial: Criticism follows court's decision*, Washington Times (May 17, 2005) <http://www.ijdh.org/2005/05/archive/raboteau-massacre-trial-criticism-follows-courts-decision/> ("The administration of Haitian Prime Minister Gerard Latortue has denied exerting any influence over the court in its decision, responding to complaints that the government has made a habit of trampling judicial independence.").

<sup>47</sup> See, e.g., Brian Concannon Jr., *Justice Dodged, Part II.*, Equipo Nizkor & Derechos Human Rights (June 2005), <http://www.derechos.org/nizkor/haiti/doc/brian.html>; Letter of the Association of the Bar of the City of New York to the Prime Minister and the Minister of Justice and Public Security (Aug. 12, 2005), available at <https://drive.google.com/file/d/1UVRkbVnrdIkBoWP9rq1mLv1TEXt64bQ/view> ("It is troubling that the Cour de Cassation made an apparently political decision to delay its decision on the appeal from early 2001 to March 2005."); Concannon 2001 (noting further that defendants benefited from bilingual warrants, some of Haiti's best criminal defense lawyers, and a jury of their peers).

It is also worth noting that the remedy fashioned by the *Cour de Cassation* was itself deeply problematic and further indicative of a political motive and a deeper regression toward impunity. Instead of merely voiding the jury convictions so that the error it identified in its decision (use of a jury) could be corrected, the Court denied the possibility of a new trial, with no explanation for doing so. See Mario Joseph & Brian Concannon Jr., *Memorandum Re: Analysis of Cour de Cassation Decision Vacating Raboteau Massacre Convictions*, IJDH (June 6, 2005), <http://www.ijdh.org/wp-content/uploads/2010/01/Memo-Brian-Legal-Analysis.pdf>.

<sup>48</sup> See Letter of the Association of the Bar of the City of New York to the Prime Minister and the Minister of Justice and Public Security (Aug. 12, 2005), available at <https://drive.google.com/file/d/1UVRkbVnrdIkBoWP9rq1mLv1TEXt64bQ/view>; see also Joanne Mariner, *Partial justice in Haiti*, CNN (Apr. 14, 2004), <https://www.cnn.com/2004/LAW/04/14/mariner.haiti/index.html>; Amnesty International, *Haiti: Perpetrators of past abuses threaten human rights and the reestablishment of the rule of law* (2004), <https://www.amnesty.org/download/Documents/92000/amr360382004en.pdf>; *Haiti: Powell Should Back Rebel Prosecutions*, Human Rights Watch (Apr. 5, 2004), <https://www.hrw.org/news/2004/04/05/haiti-powell-should-back-rebel-prosecutions>.

and in a scrupulously fair trial. . . . To overturn that verdict [was] to say that the only justice possible in Haiti is the justice of those with guns.”<sup>49</sup>

*(b) Improper Application of the 2005 Reversal to the in Absentia Conviction of Carl Dorélien*

On August 1, 2005, the Chief Registrar for the Court of First Instance of Gonaïves, which had presided over the Trial, issued a certificate stating that in light of the 2005 vacatur decision, no charge against Carl Dorélien remained.<sup>50</sup> Dorélien had served as the assistant chief of staff of the FADH under Cédras and was responsible for discipline of military personnel, who instead brutalized Haitian civilians with impunity. Escaping to the United States to evade the Trial (wherein he was convicted *in absentia* and sentenced to hard labor for life), Dorélien ultimately faced some accountability there: he was found guilty of human rights abuses in U.S. civil proceedings and ordered to pay U.S. 4.3 million to the plaintiffs.<sup>51</sup> During the pendency of the civil proceedings, the U.S. deported Dorélien to Haiti in 2003, where he was arrested under the Raboteau conviction, which he did not challenge. Dorélien escaped prison during the chaos of the 2004 coup.<sup>52</sup> The certificate followed, a chronology that, again, suggests judicial impropriety, political interference, or both. The BAI sharply denounced the issuance of the certificate as improper and explained that there was no basis for applying the 2005 vacatur to the charges against Dorélien, whose name did not even appear on the vacatur judgment.<sup>53</sup> Nevertheless, Dorélien appears to remain at large in Haiti.<sup>54</sup>

*(c) Mainstream Rehabilitation of Former FADH and FRAPH Officers*

Soon after the return of Aristide’s democratically-elected government in 1994, the FADH, with its long history of coups and “rampant human rights abuses,” was demobilized.<sup>55</sup> This, too, should be seen as part

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<sup>49</sup> Jake Johnston, *Meet the New Haitian Military*, *Haiti Liberté* (Mar. 21, 2018), <https://haitiliberte.com/meet-the-new-haitian-military/> (quoting Reed Brody of Human Rights Watch, who had previously worked with the BAI).

<sup>50</sup> The Certificate appears to conclude that the 2005 vacatur annulled the very indictment (*Ordonnance*) against Dorélien. See Mario Joseph, Open Letter (Dec. 22, 2005), available at <http://www.ijdh.org/wp-content/uploads/2010/01/Lettre-Min-Jus-Raoul-Jacques.pdf>.

<sup>51</sup> See *Jean v. Dorélien*, Final Judgment (S.D. Fla., Aug. 16, 2007), available at [https://cja.org/downloads/Dorelien\\_Final\\_Judgment\\_081607.pdf](https://cja.org/downloads/Dorelien_Final_Judgment_081607.pdf).

<sup>52</sup> Amnesty International, *Haiti: Perpetrators of past abuses threaten human rights and the reestablishment of the rule of law* (2004), <https://www.amnesty.org/download/Documents/92000/amr360132004en.pdf>.

<sup>53</sup> See Mario Joseph, Open Letter (Dec. 22, 2005), available at <http://www.ijdh.org/wp-content/uploads/2010/01/Lettre-Min-Jus-Raoul-Jacques.pdf>.

<sup>54</sup> See Center for Justice and Accountability, *Jean v. Dorélien: Perpetrators*, <https://cja.org/what-we-do/litigation/jean-v-dorelien/perpetrators/>. While no significant public mention of his public life was identified, it is noteworthy that Dorélien’s son has served as the Deputy Director General for the Ministry of Planning and External Cooperation under President Martelly, see Caribbean Journal Staff, *Haiti’s Government Adds New Officials*, *Caribbean Journal* (Aug. 15, 2012), <https://www.caribjournal.com/2012/08/15/haitis-government-adds-new-officials/>, and has been implicated in the Petrocaribe corruption scandal. See, e.g., Peterson Jean-Giles, *Fonds Petrocaribe: plus de 27 millions de dollars USD*, *Le National* (Jul. 4, 2019), [http://www.lenational.org/post\\_free.php?elif=1\\_CONTENTUE/sports&rebmun=2312](http://www.lenational.org/post_free.php?elif=1_CONTENTUE/sports&rebmun=2312). See further, e.g., Tania Karas & Amy Bracken, *Meet the Petrochallengers: A new generation wants to bring accountability to Haiti. Can they succeed?*, *The World* (Apr. 29, 2019), <https://www.pri.org/stories/2019-04-29/meet-petrochallengers-new-generation-wants-bring-accountability-haiti-can-they> (providing an overview of the Petrocaribe scandal and resulting movement for accountability).

<sup>55</sup> See, e.g., Andres Martinez Casares & Joseph Guyler Delva, *Haitian army set to make controversial return after two decades*, *Reuters* (Nov. 18, 2017), <https://www.reuters.com/article/us-haiti-military/haitian-army-set-to-make->

of the Raboteau promise – an effort to tamp down on abusive institutions even as an investment was made in mechanisms of justice and civilian access to recourse.<sup>56</sup>

But that advancement has also been reversed as the FADH slowly returned, first tentatively, with a 2015 decree issued by President Martelly,<sup>57</sup> and then formally on Nov. 18, 2017, under current President Moïse.<sup>58</sup> The ranks of the reinstated FADH include former leaders tainted by allegations of human rights abuses.<sup>59</sup> They also include Colonel Jean-Robert Gabriel, the secretary of the FADH general staff and later a public spokesperson for the Cédras regime, who was convicted *in absentia* at the Trial.<sup>60</sup> The BAI – which had served as counsel for victims in their search for accountability<sup>61</sup> – pointedly reminded the Moïse administration of the conviction against Gabriel and of the government’s obligation to bring him to justice.<sup>62</sup> It further urged the administration to avoid giving Gabriel a platform to “resume military barbarism and show disdain for the legitimate rights of the Haitian people.”<sup>63</sup> The government has nevertheless persisted in claiming that the reinstated FADH, including the convicted Gabriel, have been vetted, and that “every member is clean of human rights violations.”<sup>64</sup> In the context of such purported

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[controversial-return-after-two-decades-idUSKBN1DJ01M](https://www.haitiliberte.com/meet-the-new-haitian-military/); Jake Johnston, *Meet the New Haitian Military*, *Haiti Liberté* (Mar. 21, 2018), <https://haitiliberte.com/meet-the-new-haitian-military/>.

<sup>56</sup> See *supra* Section III; see also Jacqueline Charles, *Haiti has an army and a police force. How did they end up shooting at each other?*, *Miami Herald* (Feb. 28, 2020), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article240650527.html> (noting that an effort was made to ensure that the police, who were to take over managing domestic security needs, would not be politicized and would avoid Haiti’s history of “leaders [who] traditionally turned to shadow security forces . . . to enforce their will and ensure their stay in power”).

<sup>57</sup> See Jake Johnston, *Meet the New Haitian Military*, *Haïti Liberté* (Mar. 21, 2018), <https://haitiliberte.com/meet-the-new-haitian-military/>.

<sup>58</sup> *Id.*

<sup>59</sup> See Jacqueline Charles, *Haiti has an army and a police force. How did they end up shooting at each other?*, *Miami Herald* (Feb. 28, 2020), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article240650527.html>; see also Jake Johnston, *Meet the New Haitian Military*, *Haiti Liberté* (Mar. 21, 2018), <https://haitiliberte.com/meet-the-new-haitian-military/>; Jacqueline Charles, *Haiti has a new army with much of the old leadership. Some in the U.S. aren’t happy.*, *Miami Herald* (Mar. 26, 2018), (<https://www.miamiherald.com/news/nation-world/world/americas/haiti/article206915699.html>) (noting that all six of the announced heads of high command for the reinstated FADH had once been subject to U.S. sanctions for their high level involvement in the Cédras coup).

<sup>60</sup> See Jake Johnston, *Meet the New Haitian Military*, *Haïti Liberté* (Mar. 21, 2018), <https://haitiliberte.com/meet-the-new-haitian-military/> (noting that Gabriel had been included on the original (1993) U.S. sanctions list and was part of the Cédras delegation to the Governors Island negotiations between Cédras and Aristide, indicating his high position in the regime).

<sup>61</sup> See, e.g., Harvard Case Study.

<sup>62</sup> 2018 BAI Press Release.

<sup>63</sup> *Id.*

<sup>64</sup> Jacqueline Charles, *Haiti has a new army with much of the old leadership. Some in the U.S. aren’t happy.*, *Miami Herald* (Mar. 26, 2018), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article206915699.html> (quoting Haiti Defense Minister Hervé Denis); Jake Johnston, *Meet the New Haitian Military*, *Haïti Liberté* (Mar. 21, 2018), <https://haitiliberte.com/meet-the-new-haitian-military/> (quoting Denis as saying that “the candidates were subjected to vetting, including Colonel Gabriel” and that “[t]here is nothing negative against him in the vetting with regard to human rights”).

vetting, it is not known whether an improper application of the 2005 vacatur (as with Dorélien's) has been made or sought for convicted former fugitives like Gabriel.<sup>65</sup>

In short, the reinstatement of the FADH (with an officer corps of individuals convicted of atrocities in their previous roles with the army) looks more like an actual return of an institution that had been found to function as a “criminal enterprise” for the repression of civilians in the Trial,<sup>66</sup> along with a reintegration into the government of actors complicit in abuses from the Cédras and even Duvalier eras.<sup>67</sup> As noted by the BAI, such FADH appointments and government affiliations “disregard . . . the rights of the numerous innocent victims of the bloody coup” and threaten a “return to the barbaric use of weapons to impose silence upon the population.”<sup>68</sup>

*(d) Re-Weakened Judiciary*

In the lead-up to the Trial, the returned democratic government of Haiti “inherited a justice system with no capacity for, tradition of, or interest in, handling either complex cases or prosecutions of those who had wielded power,” a system that was further weakened by the preceding military dictatorships of the Duvaliers and then Cédras.<sup>69</sup> As discussed above, the Trial embodied a moment when sustained government commitment to accountability, met with thoughtful and targeted investments in Haiti's justice sector, demonstrably improved both that sector's capacity to deliver justice to the people of Haiti and its credibility as an institution that would fight impunity and act in accordance with the rule of law.<sup>70</sup> However, in the intervening years that commitment and investment has dissipated, leaving Haiti's legal system in “disarray,” driven in part by poverty<sup>71</sup> and insecurity,<sup>72</sup> but also by political interference, a

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<sup>65</sup> At least one public source claims that “[a] Haitian court overturned Gabriel's conviction in 2006, using a technicality it had dredged up from a 1928 law” – presumably the same one asserted as the basis for the 2005 vacatur. See John Marion, *Haitian Army General Staff Appointed Amid Tensions with the Dominican Republic*, World Socialist Website (Apr. 6, 2018), <https://www.wsws.org/en/articles/2018/04/06/hait-a06.html>.

<sup>66</sup> See *supra* Section II (citing Colonel Horacio P. Ballester & Colonel Jose Luis Garcia, *Responsabilités hiérarchiques des Forces Armées d'Haïti dans le déroulement des opérations survenues du 18 au 22 avril 1994 à Raboteau (Gonaïves)* (1999), [https://drive.google.com/file/d/1OUh64jcDr6pI5QSFVU6cGC--V\\_J0om1F/view](https://drive.google.com/file/d/1OUh64jcDr6pI5QSFVU6cGC--V_J0om1F/view)).

<sup>67</sup> See, e.g., Jake Johnston, *Meet the New Haitian Military*, *Haïti Liberté* (Mar. 21, 2018), <https://haitiliberte.com/meet-the-new-haitian-military/>; Jeb Sprague, *Paramilitarism and the Assault on Democracy in Haiti* (Monthly Review Press, 2012), pp. 15-17, 269 (describing the active networks of former army and paramilitary (including FRAPH) members in Haiti today, “often behind closed doors [and . . . b]acked by a collection of wealthy elites and hundreds of allies in Haiti's police and government”).

<sup>68</sup> 2018 BAI Press Release (further “denounc[ing] this macoutized army as well as the establishment of this military staff composed of experts in the use of outrageous brutality against the rights of the Haitian people, their interests, and their progress” and expressing concern that it would force “the Haitian people [to] relive the darkest hours of the bloody Duvalier dictatorship”). See also Andres Martinez Casares & Joseph Guyler Delva, *Haitian army set to make controversial return after two decades*, Reuters (Nov. 18, 2017), <https://www.reuters.com/article/us-haiti-military/haitian-army-set-to-make-controversial-return-after-two-decades-idUSKBN1DJ01M> (reporting on concerns that the “decision to reinstall former army leaders tainted by human-rights abuses immediately stirred fear that Haiti had not learned from its past,” along with fears that political leaders can use the returned army, “directly loyal” to those leaders “to do whatever the hell they want, just like the FADH was used”).

<sup>69</sup> Concannon 2001; see also, e.g., Harvard Case Study.

<sup>70</sup> See further *supra* Section III.

<sup>71</sup> See, e.g., Mario Joseph & Nicole Phillips, *Judicial Corruption in Haiti: The Need for Discipline and Civil Society Participation*, 39 *Hastings Int'l & Comp. L. Rev.* 183 (2016), available at [https://repository.uchastings.edu/hastings\\_international\\_comparative\\_law\\_review/vol39/iss1/10](https://repository.uchastings.edu/hastings_international_comparative_law_review/vol39/iss1/10).

<sup>72</sup> See, e.g., Lemoine Bonneau, *Les bandits délogeront-ils le palais de justice ?*, *Le Nouvelliste* (Jan. 23, 2020), <https://www.lenouvelliste.com/article/211521/les-bandits-delogeront-ils-le-palais-de-justice> (reporting on senior

culture of unaddressed corruption, and a failure to reorient – as the Trial attempted to do – towards justice favoring Haiti’s majority, and not just the wealthy and the political elite.<sup>73</sup>

In addition, a persistent failure to modernize Haiti’s laws to conform to broadly accepted principles of justice, due process, and fair trial means that bad laws and resulting inconsistencies can be exploited for political purpose to evade accountability. The 2005 vacatur and its subsequent unsupported application to non-jury convictions arising from the Trial illustrate the profound harm of such statutory vulnerability,<sup>74</sup> which perverts the very notion of the rule of law by allowing the instruments of justice to be coopted in the name of impunity.

(e) *Constant Deportation*

The most recent inflection in the Raboteau history came on May 5, 2020, when reports made clear that Emmanuel “Toto” Constant, the founder and leader for FRAPH,<sup>75</sup> who had been convicted in absentia during the Trial<sup>76</sup> and then held liable for his crimes in civil proceedings brought by his victims in the United States<sup>77</sup> was to be deported to Haiti.<sup>78</sup> That deportation – following Constant’s apparent early

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judicial actors describing serious insecurity that is “gaining ground every day” and requesting that if the authorities are unable to guarantee safety, they move the Supreme Court courthouse) (informal French translation); Caleb Lefèvre, «*Le tribunal ne peut fonctionner au gré des bandits*», *s'indigne Jean Wilner Morin*, *Le Nouvelliste* (Jan. 22, 2020), <https://lenouvelliste.com/article/211330/le-tribunal-ne-peut-fonctionner-au-gre-des-bandits-sindigne-jean-wilner-morin> (reporting on a backlog of cases and prolonged pretrial detentions due to insecurity based on statements by Judge Jean Wilner Morin); *Haiti-Justice: Le Rnddh souhaite la reprise des activités à la Cour d'appel de Port-au-Prince*, *Alterpress* (Apr. 29, 2020), <https://www.alterpresse.org/spip.php?article25556#.XsgqemhKiM8> (reporting on demands that the Court of Appeals of Port-au-Prince, which has been closed since the end of 2019, be reopened).

<sup>73</sup> See, e.g., Mario Joseph & Nicole Phillips, *Judicial Corruption in Haiti: The Need for Discipline and Civil Society Participation*, 39 *Hastings Int'l & Comp. L. Rev.* 183 (2016), available at [https://repository.uchastings.edu/hastings\\_international\\_comparative\\_law\\_review/vol39/iss1/10](https://repository.uchastings.edu/hastings_international_comparative_law_review/vol39/iss1/10).

A full discussion of the challenges currently faced by the Haitian justice sector are beyond the scope of this briefing. The following reports offer a good general overview: Freedom House, *Haiti* (2020), <https://freedomhouse.org/country/haiti/freedom-world/2020>; Human Rights Watch, *World Report 2019* (2020), at 259-264, [https://www.hrw.org/sites/default/files/world\\_report\\_download/hrw\\_world\\_report\\_2019.pdf](https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2019.pdf); see also *Politique: L'Association Professionnelle des Magistrats Menace de se Mobiliser pour le Renforcement de la Justice en Haïti*, *AlterPresse* (May 26, 2020), <https://www.alterpresse.org/spip.php?article25695#.Xs7uHTpKiM9> (publishing statement by Haiti’s Professional Association of Magistrates that “[t]he country's justice system suffers from a very acute structural and superstructure crisis, which paralyzes it deeply, preventing it from giving adequate responses to serious crime and new forms of crime” and that the justice system “is almost deprived of the bare minimum necessary, in terms of material and technical working tools, to fulfill its sovereign jurisdictional missions”); Caleb Lefèvre, “*D’ici trois mois, des tribunaux fonctionneront avec un seul juge*,” *Le Nouvelliste* (Jun. 2, 2020), <https://lenouvelliste.com/article/216832/dici-trois-mois-des-tribunaux-fonctionneront-avec-un-seul-juge> (reporting on pervasive delays in renewing judicial mandates and allegations of political manipulation of appointments to remove judges committed to impartiality).

<sup>74</sup> See *supra* Section IV(a).

<sup>75</sup> Constant has admitted under oath that he was the leader of FRAPH. See Concannon 2001. For an extensive – though dated – portrait of Constant, see David Grann, *Giving "The Devil" His Due*, *Atlantic* (June 2001), <https://www.theatlantic.com/magazine/archive/2001/06/giving-the-devil-his-due/302234/>.

<sup>76</sup> See Judgment of the Court of First Instance of Gonaïves, available at <https://drive.google.com/file/d/1TW6LBd49lxwKyjmbD8sildbJL4ThTOID/view>.

<sup>77</sup> See *Doe v. Constant*, Summary Order (2d Cir. Dec. 1, 2009), available at [https://cja.org/downloads/Constant\\_Second\\_Circuit\\_Summary\\_Order.pdf](https://cja.org/downloads/Constant_Second_Circuit_Summary_Order.pdf).

parole from his 37-year sentence for mortgage fraud in the United States<sup>79</sup> – was suddenly effectuated on June 23 after several aborted plans to do so earlier.<sup>80</sup> As the BAI has emphasized in its May 6 letter to the Haitian Minister of Justice and Public Security, Haitian law requires that if deported, Constant be arrested and brought to justice.<sup>81</sup> His Raboteau conviction still stands, although he may demand a new trial.<sup>82</sup> Constant was detained upon his return.

The Constant case is not unique,<sup>83</sup> although his previous role and public consternation regarding his crimes<sup>84</sup> may result in a host of political and security challenges in connection with his return. In a fundamental way, Constant is just another formerly powerful individual who was convicted for serious abuses against the Haitian people, fled justice, and then returned. Both he and others like him must be brought to justice in accordance with the law.

## V. Conclusion

Because of the Raboteau Trial, meaningful accountability in Haiti's courts is no longer unprecedented. Haiti is demonstrably capable of delivering justice to its citizens, even in complex, politically-fraught circumstances. But the erosion of the commitment to and tools for promoting accountability that occurred over the last 20 years must be halted and reversed.

To that end, the government of Haiti must renew its commitment to a competent, active judiciary that zealously pursues accountability within the confines of the rule of law, even when its targets are the powerful or the rich, including by:

- (i) Formally holding accountable, in accordance with the full provisions of the law, individuals found in Haiti who are accused of crimes, especially when serious human rights abuses are alleged. This is especially true for individuals already convicted of crimes in Haiti, like the *in absentia* Raboteau defendants Gabriel and Constant, who must be arrested and submitted to appropriate authorities for procedures in accordance with the law.

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<sup>78</sup> See Jake Johnston, *The US Has Been Exporting COVID-19 to Haiti; Now, It Is Returning a Death Squad Leader*, CEPR (May 5, 2020), <https://cepr.net/the-us-has-been-exporting-covid-19-to-haiti-now-it-is-returning-a-death-squad-leader/>.

<sup>79</sup> See *id.*; see also *People v. Constant*, Sentencing Order, (Kings County Supreme Ct. Oct. 28, 2008) <http://www.ijdh.org/wp-content/uploads/2020/05/10.28.08-Constant-Sentencingorder.pdf>.

<sup>80</sup> See Jacqueline Charles, *Emmanuel 'Toto' Constant Is Back in Haiti. Death Squad Leader Immediately Arrested*, Miami Herald (Jun. 23, 2020), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article243732952.html>.

<sup>81</sup> 2020 BAI Letter. See also Joint Open Letter of BAI and the National Network for the Defense of Human Rights (*le Réseau National de Défense des Droits Humains*, RNDDH) to the Haitian Ministry of Justice and Public Security (May 16, 2020), <http://www.ijdh.org/wp-content/uploads/2020/05/Letter-of-BAI-and-RNDDH-to-the-MoJ-05.16.20.pdf>.

<sup>82</sup> See *id.*

<sup>83</sup> For example, Louis Jodel Chamblain, a deputy leader of FRAPH who was also convicted *in absentia* for the Raboteau Massacre, but returned to Haiti in 2004, see e.g., Amnesty International, *Haiti: Perpetrators of past abuses threaten human rights and the reestablishment of the rule of law* (2004), <https://www.amnesty.org/download/Documents/92000/amr360132004en.pdf>, remains at large, apparently without any of the criminal process required by Haitian law. *Haiti - FLASH : Rumor of preparation of a Coup ?*, *Haïti Liberté* (Mar. 10, 2018), <https://www.haitilibre.com/en/news-25704-haiti-flash-rumor-of-preparation-of-a-coup.html> (reporting on Chamblain speaking on the radio and even discussing another potential coup).

<sup>84</sup> See, e.g., David Grann, *Giving "The Devil" His Due*, *Atlantic* (June 2001), <https://www.theatlantic.com/magazine/archive/2001/06/giving-the-devil-his-due/302234/>.

- (ii) Refraining from placing into positions of public trust individuals with a history of human rights violations or other crimes in the absence of formal, public, and procedurally sound judicial exoneration for any wrongdoing that fully comports with all national and international standards of justice and thorough investigation; and meaningfully vetting public officials, especially those equipped to exercise physical force.
  
- (iii) Investing in the capacity and credibility of the justice sector, including by refraining from political interference with the courts, establishing mechanisms for combating corruption, and modernizing Haiti's laws to conform to broadly accepted principles of accountability, due process, and fair trial. Such an investment should also include measures to make the organs of justice more accessible to all Haitians, including by creating, funding, and supporting victim-oriented legal assistance; incorporating the use of the Haitian Creole language into judicial proceedings and related materials; improving judicial infrastructure with due consideration for geographic access; and better disseminating information regarding legal rights.