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V. Justice for Haiti: The Raboteau Trial

Haiti’s Raboteau Massacre trial was a major, though under-reported, development in international law in 2000. The case is a milestone in the international fight against impunity for large-scale human rights violations. It can also serve as a model for other countries attempting to address the crimes of a dictatorship through national prosecutions after a democratic transition.

The trial concluded on November 9, 2000 when, after six weeks of trial and five years of pre-trial proceedings, a jury in the Haitian city of Gonaïves convicted sixteen former soldiers and paramilitaries for participating in the April 1994 Raboteau Massacre. A week later, the judge convicted thirty-seven more defendants *in absentia*, including the entire military high command and the heads of the paramilitary FRAPH (Front Révolutionnaire pour l’Avancement et le Progrès Haitiens).

The Raboteau case marked a sharp break with a long tradition of impunity in Haiti. The case was the most complex in the country’s history, and was the first broad prosecution of commanders for human rights violations. Most important, the proceedings were fair to victims and defendants alike, as attested by national and international monitors. Raboteau’s success was due in large part to the persistence of individuals, especially the victims, but also reflected significant systemic improvements in Haiti’s judiciary since its democratic transition began in 1994.

A. BACKGROUND

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* regime. The *de factos* murdered and tortured with impunity for three years,ⁱ and attacked judicial authorities that tried to curb their abuses.ⁱⁱ When the constitutional authorities returned in October 1994, they 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.ⁱⁱⁱ

Raboteau is a poor neighborhood of fishermen, salt rakers, and small merchants. When the neighborhood sparked the nationwide protests in 1985 that led to the departure of Jean-Claude “Baby-Doc” Duvalier, it acquired a reputation for resisting tyranny. When the army ousted Jean-Bertrand Aristide, Haiti’s first democratically-elected President, on September 30, 1991, the people of Raboteau immediately took to the streets, joining tens of thousands of democrats around the country. In Raboteau, as elsewhere, the soldiers shot into the crowds, killing unarmed demonstrators.

Over the next two and one half years, the people of Raboteau continued their nonviolent resistance. They held clandestine meetings, hid refugees, circulated literature, and organized

demonstrations.^{iv} The dictatorship responded by sending military and paramilitary patrols into the area; beating, threatening, arresting and torturing those involved in the resistance, as well as anyone believed to be connected with them. Houses were sacked, money stolen, and businesses destroyed.

B. THE MASSACRE

The repression in Raboteau culminated in the events of April 18-22, 1994. Throughout 1994, the international community had increased the pressure on the dictatorship, and the regime had responded by increasing its pressure on the Haitian people. On April 18, the army and paramilitaries conducted what has been called “the rehearsal” in Raboteau. Charging into Raboteau in pickup trucks, they shot at and chased the young men who formed the backbone of the resistance.

They watched as the activists fled to the harbor, Raboteau’s “embassy,” where those fleeing the army could find safety under the water or in a local fishing boat. The attackers also sacked the house of a prominent local leader, and savagely beat an elderly blind man, who died the next day. Over the next few days, the army planned and organized. Reinforcements arrived, and the barracks were placed on “Condition D,” full alert.

The main attack started before dawn on April 22. Army troops and paramilitaries approached Raboteau from several angles, and started shooting. They charged into houses, broke down doors, stole and destroyed possessions. They terrorized the occupants. Young and old, men, women and children were threatened, beaten, forced to lie in open sewers and arrested. The onslaught forced many to take the familiar route to the harbor, but this time an armed ambush awaited them. Many were killed; some were wounded, on the beach, in the water and in boats. Some were arrested, imprisoned, and tortured. One girl shot in the leg had to flee the hospital the next day, and another hospital a few days later when soldiers came looking for her.

The death total will never be known, because the attackers prevented relatives from claiming the bodies. Several were buried by paramilitaries in shallow graves and disinterred by animals and eaten. Others floated out to sea. The prosecution felt that eight murders were sufficiently documented to present to the jury. Dozens were assaulted, arrested, imprisoned, and/or tortured. Thousands fled their homes, as the bustling neighborhood cleared out.

C. THE FIGHT FOR JUSTICE

For the victims, trial preparation started the day after the massacre. The local justice of the peace lived in Raboteau, and he toured the neighborhood, documenting the damage to houses and taking witness statements as people returned. A French priest with the Catholic Church’s Justice and Peace Commission helped preserve medical records and more statements. When the elected government returned to power five months later, the victims began the long fight to force their case through the justice system. Although the case enjoyed broad popular and deep governmental support, the prosecution often seemed bogged down, and in the end took five years to reach trial.

The victims collaborated enthusiastically with government initiatives, especially the Truth and Justice Commission, which devoted a chapter of its report to the massacre.^v The victims also aggressively lobbied local, national, and international media and human rights groups, and pressured government officials. They employed an array of tactics: demonstrations, press conferences, faxes, forging links with other groups, even creating their own songs. Eventually the Raboteau massacre became the leading symbol for the dictatorship's repression, and its prosecution a key indicator of Haiti's progress in reforming its justice system.

The Bureau des Avocats Internationaux (BAI), a group of lawyers funded by the Haitian government, started working on the Raboteau case in 1996. The BAI prepared complaints for the victims, represented them in court proceedings, and helped them advocate outside of the courtroom. The cornerstone of the BAI's strategy was the "*partie-civile*" process, which, under the French system adopted by Haiti, allows the victims' claims for money damages against the defendants to piggyback on the criminal prosecution. *Partie-civile* lawyers can participate in almost all phases of the criminal case, especially the trial. In addition to the victims, the BAI worked closely with prosecutors, the investigating magistrates, police, and national officials.

The Haitian government also established a special coordination office that handled logistics and coordinated the activities of the various actors. The office organized seminars for the victims and arranged for medical, psychological, and economic assistance. A special unit of the newly formed Haitian police pursued and arrested many of the suspects. After one defendant escaped in 1996, Gonaïves' prison officials were replaced, and the building was reinforced.

In addition to efforts specific to the case, the preparation for the Raboteau massacre trial reflected broader improvements in Haiti's justice system since 1994. The area where improvement was most needed, and most made, was in the individual capacity of judicial personnel. Both the trial judge and the chief prosecutor were justices of the peace at the time of the transition, but had moved quickly up the ranks due to training and continuing education programs. The judge graduated at the top of the first class of Haiti's new *Ecole de la Magistrature*, a training academy for judges and prosecutors. An assistant prosecutor had recently returned from a year at France's *Ecole de la Magistrature*. He was the academic director of Haiti's *Ecole* at the time of trial, and after his performance in the Raboteau case he was named chief prosecutor in Port-au-Prince.

The Haitian justice system was also able to respect all of the relevant procedures by the time of trial. In 1996, the constitutional requirement that warrants be written in French and Haitian Creole was rarely observed, because the forms were only in French. Defendants did not obtain counsel until just before trial, which prevented adequate trial preparation and appeal of pre-trial rulings. The jury was chosen from a small pool of the local elite. In the Raboteau case, defendants were all held pursuant to valid, bilingual warrants. They were represented from the beginning by some of Haiti's best criminal lawyers, who aggressively fought pre-trial rulings all the way to the Supreme Court.^{vi} The jury was chosen from a wide geographic, economic, and social spectrum.

Material improvements were made as well. The Canadian government replaced all of Haiti's provincial trial court buildings (the old Gonaïves courthouse had no electricity, telephone, or toilet. During slow trials one could observe the appeals court through the floorboards). In 1997, several hearings were delayed because prison authorities did not have a vehicle to transport a prisoner to court. By 2000, the prison system was able to transport all twenty-two defendants in custody at once, with no hitches.

The Raboteau prosecution was spared two common obstacles to transitional justice, an army, and an amnesty law. The army was disbanded in 1995, and the amnesty law, enacted under international pressure, was intentionally toothless.^{vii} In addition, there was broad popular support for the trial, and little open resistance. As a result, most of the struggle to get the case to trial was against the justice system itself.

D. THE TRIAL

The Raboteau massacre trial was the largest and most complicated in Haiti's history. The entire six weeks^{viii} was broadcast live on national radio, much of it on TV, and was the main topic of conversation everywhere. It was the first time the military leadership had been tried for human rights violations. The prosecution used an unprecedented number of witnesses and documents, and pioneered the use of expert testimony in criminal cases.

Each day of the trial was observed by several Haitian human rights organizations, as well as by members of MICAH, the United Nations Support Mission to Haiti. The prosecution team's four lawyers worked closely with two lawyers from the BAI, who represented the civil interests of the victims^{ix}. A total of ten lawyers represented the twenty-two defendants in custody.^x

The core of the prosecution's case was eyewitness testimony. Thirty-four witnesses testified for the prosecution, including victims, their neighbors, and local officials. The eyewitness accounts were highly consistent and were corroborated by expert testimony. With a few minor exceptions, the witnesses' stories withstood rigorous scrutiny.^{xi}

An international team of forensic anthropologists had exhumed and studied the remains of three presumed victims in 1995, and interviewed survivors. A team member testified to how its observations: injured bones, clothing, and ropes around the skeletons' necks, even a key to the house where the victim had reportedly stayed, confirmed the witness' accounts. A geneticist established that DNA from two of the bodies matched that of the reported victims' relatives.

The case against the military and paramilitary leadership, who were tried *in absentia*, was based on command responsibility and accomplice theories. The former head of MICIVIH, the U.N./O.A.S. human rights mission to Haiti explained how the repression was organized systematically and on a national scale, and included military and paramilitary elements. He noted that Gonaïves, and particularly Raboteau, had been targeted throughout the coup years, and that the leadership was well aware of this repression. He concluded that the attack had been planned and covered up by national military and civilian leaders.

Two Argentine military experts had investigated the Raboteau massacre at the court's request in 1999. Their report^{xii} concluded that the military leaders were responsible for the massacre under both Haitian and international law. At trial, they explained the legal responsibility of the soldiers, both superiors and subordinates. The experts opined that the high command was at least aware of the massacre beforehand, and did nothing to stop it. They also described the army as "a criminal enterprise," that was organized for repressing civilians, rather than for any legitimate military purpose.

The documentary evidence included information from the army archives, and reports from human rights organizations. The army documents were particularly useful in describing how the military units were organized, and supplied by the high command. Individual soldiers' personnel files disproved their defenses that they were at another barracks at the time of the massacre. The prosecution even obtained the high command's report on the incident, which demonstrated its knowledge of the massacre and failure to punish those involved.

Many documents did not make it into the courtroom. Approximately 160,000 pages were removed from Haitian military and paramilitary offices by U.S. troops in 1994. Despite repeated calls for their return by the Haitian government, members of the U.S. Congress, the United Nations, human rights groups like Human Rights Watch and Amnesty International, and a host of organizations and individuals in more than thirty countries, the documents had not been returned.

The defendants erected a common front. All but one claimed that they were not present at the massacre, and most claimed to have little knowledge of it until their arrests. With slight exceptions, none inculpated a co-defendant. The official military version of the incident, expressed in press releases and by the highest-ranking defendant at trial (a captain) was that there was no massacre; that the army had responded to an attack on a military post by chasing some of the "terrorists" away, without significant casualties on either side.^{xiii}

The jury deliberated for four hours, and found sixteen of the twenty-two defendants in custody guilty, all of serious crimes. Twelve of these were convicted for premeditated murder and received the mandatory sentence of life imprisonment. The other four received sentences from four to nine years. The *in absentia* defendants all received the mandatory life imprisonment, but they are entitled to a new trial if they return to Haiti. In the civil portion of the case, the victims were awarded a total of U.S.\$140 million in damages.

National and international observers agreed that the trial was fair to victims and accused alike. Adama Dieng, the U.N. Human Rights Commission Independent Expert on Haiti, called the trial "a huge step forward" for the Haitian justice system.^{xiv} The U.N.'s MICAH added that the Raboteau massacre case, along with the August 2000 Carrefour Feuilles Massacre trial, "prove that the Haitian Justice system is capable of effectively prosecuting" human rights cases, "while respecting the guarantees of the 1987 Constitution and International Treaties to which Haiti is a party."^{xv} Lovinsky Pierre-Antoine of Fondation 30 Septembre, Haiti's largest victims' group, called the trial "fair and balanced for victims and accused alike," and hoped it would be a model for future cases.

E. FOLLOW-UP

Despite this success, the Raboteau massacre case is not finished. Adama Dieng emphasized that the “Haitian justice system must continue to pursue those convicted in absentia,” and called on “[c]ountries where the fugitives may be found” to cooperate with Haitian authorities to arrest and extradite them.^{xvi} Raoul Cedras, the army Commander-in-Chief, and Philippe Biamby, head of the High Command, are in Panama, while Michel Francois, the third leader of the coup, is in Honduras. The rest of the High Command, as well as Emmanuel Constant, the leader of the paramilitary FRAPH organization, are reported to be in the United States.^{xvii}

The BAI, along with clinical programs at DePaul University’s International Human Rights Law Institute and Yale’s Orville H. Schell, Jr. Center for International Human Rights, is preparing extradition requests for defendants living in the United States. The BAI is also pursuing the civil damages.

The Raboteau massacre case has changed the way that Haitians perceive their justice system. For the first time, the system has been used by those traditionally without power to vindicate their rights against the traditionally powerful. For the first time, human rights victims, judges, and prosecutors throughout the country believe that the justice system really can and should provide justice. This has created a constituency for the system in general, and human rights cases in particular, both within and without the system. Victims who had previously been wary of formal justice now articulate exactly how they want their trial to be, with the Raboteau trial as the standard. Judges and prosecutors who had been wary of prominent cases now see them as realistic opportunities to do good and establish their reputation. For this reason, the Raboteau massacre case will not be the end of the fight against impunity, but the beginning. The trial also gave a boost to overall justice reform. Its success serves as a positive reinforcement of the improvements to date, and the obstacles met along the way point to concrete objectives for further reform.

The Raboteau trial should also serve as a model, and an inspiration, for efforts to combat impunity around the world. The dedication of the victims, and the Haitian government’s persistence and innovation in trying new approaches, are transferable to many situations. The success of the prosecution, especially its quality and its reach to the top military and paramilitary echelons, is a clear example that even poor countries can achieve justice through their national systems.

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- i. See generally SIM PA RELE, *RAPPORT DE LA COMMISSION NATIONALE DE VERITÉ ET DE JUSTICE* (1997) [hereinafter TRUTH AND JUSTICE COMMISSION REPORT]; IRWIN STOTZKY, *SILENCING THE GUNS IN HAITI* (1997); HUMAN RIGHTS WATCH/AMERICAS, *TERROR PREVAILS IN HAITI: HUMAN RIGHTS AND FAILED DIPLOMACY*, at 5-7 (1994).
- ii. A former prosecutor testified in the Raboteau trial, and was asked why he did not initiate any prosecution after the massacre. He acknowledged that he had a legal obligation to do so, but invoked the Creole proverb: “*Konstitisyon se papye, bayonet se fê*” (the Constitution is paper, bayonets are steel).
- iii. For a more in-depth treatment of the obstacles to justice in Haiti’s democratic transition, see Brian Concannon Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, a View from Haiti*, 32 COLUM. HUM. RS. L. REV. 201 (2000). See also WILLIAM G. O’NEILL & ELLIOT SCHRAGE, *PAPER LAWS, STEEL BAYONETS: BREAKDOWN OF THE RULE OF LAW IN HAITI I* (1990) (“There is no system of justice in Haiti. Even to speak of a ‘Haitian Justice System’ dignifies the brutal use of force by officers and soldiers, the chaos of Haitian courtrooms and prisons, and the corruption of judges and prosecutors”); Stotzky, *supra* note 185 at 81 (Haiti’s judicial structure is “less developed than that of virtually any nation that has attempted” a democratic transition).
- iv. The information in this section came mostly from trial testimony and the author’s interviews with victims (1995-2000). See also TRUTH AND JUSTICE COMMISSION REPORT, *supra* note 185, at 66 (report devoted a special section to Raboteau).
- v. TRUTH AND JUSTICE COMMISSION REPORT, *supra* note 185 at 66. The government also sponsored a Complaint Bureau (*Bureau de Doléances*) to collect testimony for prosecutors. Although the prosecutors lacked the capacity to pursue the cases, the Bureau’s preservation of evidence helped identify and evaluate witnesses.
- vi. David Stoelting, *Enforcement of International Criminal Law*, 34 INT’L LAW. 669, 671 (2000).
- vii. The amnesty only applied to the act of staging the coup d’état, not the consequent brutality. It has never been invoked by a defendant in a coup-era human rights trial. Concannon, *supra* note 187 at n. 54.
- viii. Trials in Haiti, once started, usually go until they end, with brief recesses for food and rest, but not for sleep. This often means they stretch into the morning of the next day. The first recent trial to abandon this practice was the Carrefour Feuilles Massacre trial, held in August 2000. That trial, of several policemen, some high ranking, for the killing of eleven civilians in 1999, was considered Haiti’s best ever before Raboteau. Like the Carrefour Feuilles trial, the Raboteau trial started each morning, and recessed each afternoon or early evening.
- ix. BAI lawyers, as *parties civiles*, presented evidence, questioned witnesses, made legal arguments and gave a closing statement.
- x. *In absentia* defendants are not allowed legal representation, as they have not accepted the jurisdiction of the court. They are allowed to send a friend or relative to explain their absence to the court.
- xi. In the Haitian system, the judge starts each witness by asking a broad, open-ended question about the event. The judge asks follow-up questions, then defers to the prosecutor (for either defense or prosecution witnesses). When the prosecutor is finished, the jury members are invited to ask questions. After that, the lawyers for the victims and for the defendants each take their turn, but are not allowed to address the witness directly. They must propose a question to the judge, who may pose it as is, modify it or reject it altogether.

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- xii. HORACIO PANTALEON BALLESTER & 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) (report to court on file with author).
- xiii. The U.S. Embassy military attache visited the area of the alleged attack a few days later, as did a team from MICIVIH. Both found no sign of an attack on the post. There were no reports of any military or paramilitary injuries.
- xiv. U.N. Press Release, Raboteau Verdict in Haiti A Landmark in Fight Against Impunity; But Case Not Yet Finished, Says U.N. Independent Expert (Nov. 20, 2000), *available at* <http://www.unog.ch/news2/documents/newsen/hr00090e.html> [hereinafter Raboteau Verdict].
- xv. Press Release, United Nations Support Mission to Haiti (MICAH) (Nov. 20, 2000) (author's translation) (on file with author).
- xvi. Raboteau Verdict, *supra* note 198.
- xvii. Concannon, *supra* note 187. Constant was ordered deported from the United States to Haiti in September, 1995, on the grounds that his presence in the United States was inimical to U.S. policy, as it gave the impression that the government condoned his death squad activities. In re Emmanuel Constant, No. A 74 002 009 (Immigration Ct. 1995). Shortly thereafter, Constant stated in a "60 Minutes" interview that he had coordinated his activities with the CIA, who paid and encouraged him. The deportation order was never executed. See also David Grann, "Giving 'The Devil' His Due," *The Atlantic Monthly*, June 2001, p. 54 (extensive article on Constant, his activities during the dictatorship, and his relationship with U.S. intelligence services). Colonel Carl Dorelien, a high command member convicted in the Raboteau trial was arrested by the INS and ordered deported by an immigration judge on June 21 2001 (Benjamin, Jody, "Haitian enforcer bids to stay put" *South Florida Sun-Sentinel*, June 22 2001).