PETITION
to the
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

VICTIMS OF THE MASSACRES OF AUGUST 2005 AND JULY 2006 IN MARTISSANT AND GRAND RAVINE

Petitioners

v.

THE REPUBLIC OF HAITI

Defendant

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Defendant

Submitted under the provisions of Article 23 of the Inter-American Commission's Rules of Procedure by advocates for the Petitioners:

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ACTION DES UNITÉS MOTIVÉS POUR UNE HAÏTI DE DROITS

PETITION

Inter-American Commission on Human Rights

I. INTRODUCTION

The Action des Unités Motivés pour une Haïti de Droits ("AUMOHD")[1] and the Immigrants' Rights/International Human Rights Clinic at Seton Hall University School of Law's Center for Social Justice ("CSJ") hereby submit this petition to the Inter-American Commission on Human Rights against the Republic of Haiti. AUMOHD and CSJ seek redress for the human rights violations that resulted from a massacre on August 20, 2005, and subsequent attacks in Grand Ravine on August 21, 2005, as well as for the Republic of Haiti's failure to protect the residents of Grand Ravine from ongoing attacks by civilian gangs in July 2006. The 2005 massacre began at a soccer match when police officers and members of a civilian gang called the Little Machete Army attacked spectators from Grand Ravine, a neighborhood in Port-au-Prince considered to be a stronghold of the Jean-Bertrand Aristide-affiliated Fanmi Lavalas party. The attacks continued into the next day when residents of Grand Ravine were targeted in their homes. The following year in July, anti-Aristide gangs attacked Grand Ravine twice more, killing numerous residents including women and children and burning down their homes. The perpetrators of these massacres were never convicted of any crimes and continue to terrorize the residents of Grand Ravine.

These events violate a host of human rights, including the rights to life, humane treatment, personal liberty, privacy, property, inviolability of the home, freedom of thought, expression, association, assembly, movement, residence, and judicial protection. The Republic

[1] Formerly called Association des Universitaires Motivés pour une Haiti de Droits.

of Haiti is responsible for these violations, because of its direct involvement in these egregious acts and its failure to prosecute its agents and protect Grand Ravine residents from future attacks.

II. JURISDICTION

The Inter-American Commission on Human Rights ("Commission") is competent to receive and act on this petition pursuant to Articles 1.2, 18, and 19 of the Commission's Statute. This petition has not been submitted to any other international body competent to resolve cases.

III. THE VICTIMS AND PETITIONERS

Petitioners are residents from Grand Ravine in Port-Au-Prince, Haiti who were terrorized by their own government and armed civilian gangs because of their political beliefs. Many of the petitioners, including Sylvane Pierre Paul, Rosette Jean, Eliane Francois, Elina Bathelemy, and Rosette Victor, lost family members and/or their homes during the attacks in August 2005 and July 2006. As detailed in the declarations of Jean-Pierre Frantzy and Frantzco Joseph, some witnessed the brutality firsthand, watching helplessly as their relatives, friends, and neighbors were shot or hacked to death.

This petition is submitted on behalf of the residents of Grand Ravine by AUMOHD and the CSJ at Seton Hall Law School. AUMOHD is a Haitian human rights organization that was founded in 2002 by a group of lawyers, doctors, and social workers and whose main purpose is to promote the rights and dignity of the human person. AUMOHD provides legal assistance, community organizing, and training to empower local citizens so that they can understand and advocate for their rights. AUMOHD has advocated on behalf of the residents of Grand Ravine since August 2005 following the first massacre at the soccer match.

Seton Hall Law School has a long history of supporting the rule of law and advocating for human rights in Haiti. Through its Haiti Rule of Law Program, which was established in

2002, Seton Hall Law School fosters the promotion of the rule of law through its partnership with a small rural law school in Jérémie, Haiti. In addition, CSJ's Immigrants' Rights/International Human Rights Clinic at Seton Hall Law School has represented numerous Haitian immigrants in their claims for asylum, documented prison conditions in Haiti, and litigated before this body in a case challenging the imprisonment of a grassroots activist who was tortured and held without charge in Haiti.

IV. FACTS DENOUNCED

1. In August 2005, state agents participated in a ruthless massacre of Grand Ravine residents

On August 20, 2005, approximately 6,000 people assembled to watch "Play for Peace," a USAID-sponsored soccer match aimed at discouraging gang violence, in the neighborhood of Martissant in Port-Au-Prince, Haiti.[2] The participation of national league players in the match drew an overflowing crowd of spectators.[3] Since there were not enough seats in the stadium, some spectators watched the game atop a nearby Catholic church and school.[4]

[2] *Massacre erupts at USAID game,* The Washington Times, (Aug. 29, 2005) *available at* http://www.washingtontimes.com/news/2005/aug/29/20050829-100803-6942r/?page=all; Rapport de la Police Nationale d'Haïti, Sur le dossier des massacres de Grand Ravin-Martisant (November 7, 2005) [hereinafter "Haitian Police Report"] (Exhibit L).

[3] Declaration of Frantzco Joseph (Exhibit A), ¶ 4; Declaration of Jean-Pierre Frantzy (Exhibit B), ¶ 2;

[4] Brian Concannon Jr., Letter of Allegation-Police Massacres in Haiti, August 20 and 21, 2005, Institute for Justice & Democracy in Haiti (IJDH) (August 24, 2005) [hereinafter "IJDH August 24, 2005 Letter"], *available at* http://ijdh.org/articles/article_recent_news_8-24-05b.php; Reed Lindsay, *Disorder after deadly match,* Newsday, Aug. 28, 2005, at A27. Politically-motivated gang violence had dramatically escalated in the capital of Haiti after the February 2004 coup d'état that ousted Jean-Bertrand Aristide, Haitian President and leader of the leftist political party known as "Lavalas." Reports estimate there were approximately 1,151 violent deaths between March 2004 and June 2005. Because not all deaths were reported, actual figures are likely to be higher. *See* IACHR Report, *Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community*, OEA/Ser/L/V/II.123 (October 26, 2005) [hereinafter "IACHR Report"], at 7, ¶¶ 17–18, 86; IACHR Press Release 29/05, *IACHR Calls for Immediate Measures to Quell Unprecedented Violence in Haiti* (July 22, 2005), *available at* http://www.cidh.org/Comunicados/English/2005/29.05eng.htm.

Before the match started, a leaflet entitled "The Police + The People = Solution" was circulated around the stadium.[5] The leaflet accused residents of Grand Ravine of being assassins, rapists, and thieves and encouraged others to attack them with "machetes, sticks, bottles, and rocks."[6] The leaflet also stated that "the National Police [was] with [them]" and ordered spectators of the match to "give the police all the information they had about the whereabouts of the 'rats.'"[7]

As the second half of the game was about to begin, more than a dozen police trucks filled with anti-riot officers surrounded the stadium.[8] The heavily armed police officers led by Carlo Lochard, the Division Commissioner of Police and Director of the Western Department, entered the stadium.[9] Commissioner Lochard was dressed in civilian clothing; however, the rest of the

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[5] Haitian Police Report, *supra* note 2,at ¶ 4.

[6] *Id.*; Investigative Report: 20 August 2005 Incident in Martissant, Reseau National de Defense des Droits Humains (RNDDH), (Sept. 12, 2005) [hereinafter "RNDDH Report"], *available at* http://rnddh.org/content/uploads/2012/06/Incident-de-Martissant-Sept-05.pdf.

[7] Haitian Police Report, *supra* note 2,at ¶ 4. The use of the term "rats" refers to supporters of the Aristide-aligned Lavalas party. Tom Luce, *5000 Soccer Fans Witness Police-Aided Massacre Aug 20, Another tragedy on Aug 21*, [hereinafter "Luce, *Another tragedy*"], *available at* www.mouvmansoda.org/home_files/soccermass.html. During this pre-election period, residents in neighborhoods that supported Aristide were often victims of vigilante justice, which frequently occurred with the support of police operations. RNDDH Report, *supra* note 6. The Haitian National Police ("PNH"), the institution primarily responsible for guaranteeing public security, was reported to be a major perpetrator of the politically motivated violence occurring in Haiti in the years following the 2004 coup d'etat. PNH operations were tainted with reports of abuse of force, illegal arrests, and extrajudicial killings. IACHR Report, *supra* note 2, at ¶¶ 88–89, 96–100. Haitian citizens reported that those killed by police officers during security operations were targeted based on their political opinions or social status. Lavalas supporters in particular were targeted. *Haiti: disarmament delayed, justice denied*, Amnesty International (July 28, 2005), at 12, 17–-18, *available at* http://www.amnesty.org/en/library/info/AMR36/005/2005/en (reporting two instances in which police fired indiscriminately on peaceful pro-Lavalas demonstrators). Although the PNH attributed any harm during this time as ancillary to its efforts to restore order to the violent capital of Port-au-Prince, human rights groups had long accused the PNH of murdering Aristide supporters under this pretext. Alfred de Montesquiou, *Witnesses: Haiti Police Kill 5 in Raid,* Associated Press (Aug. 10, 2005), *available at* http://ijdh.org/articles/article_recent_news_8-11-05.php.
Joseph Guyler Delva, *U.N. to investigate Haiti slum lynchings*, Reuters (Aug. 24, 2005) [hereinafter "Delva, *U.N. to investigate*"], *available at* http://reliefweb.int/node/182904. David Adams, *Haiti police accused in soccer killings*, St. Petersburg Times (Aug. 31, 2005) [hereinafer "Adams, *Haiti police accused*"], *available at* http://www.sptimes.com/2005/08/31/Worldandnation/Haiti_police_accused_.shtml.

[8] Joe Mozingo, *Alleged attacks by police, gangs investigated in Haiti*, The Miami Herald, (Sept. 6, 2005) [hereinafter "Mozingo, *Alleged attacks*"], *available at* http://ijdh.org/articles/article_grande_ravine_9-6-05.php.

[9] *Haitians 'killed in police raid',* BBC News (Sept. 2, 2005) *available at* http://news.bbc.co.uk/2/hi/americas/4208258.stm (". . . the killings were committed last month by a group of people, some of whom were wearing Haitian police uniforms"). *See also* IJDH August 24, 2005 Letter, *supra* note 4 ("Witnesses report that the perpetrators were uniformed officers of the Haitian National Police (PNH)"); Peter Bull,

officers were in uniform. [10] In addition, civilians armed with machetes engraved with "PNH," the abbreviation for Haitian National Police, accompanied the police into the stadium.[11] Upon seeing the police, the crowd applauded, believing they had come to provide security.[12]

The police then demanded the DJ to stop the music and ordered the spectators to lie down on the ground.[13] Commissioner Lochard quickly closed and locked the gates behind him with a padlock.[14] People began to panic and scatter as police officers opened fire. Spectators climbed trees and scaled walls trying to flee the violence.[15] The police fired indiscriminately and without mercy.[16] Some of the spectators were able to escape the gunfire only to be apprehended and attacked by police officers and civilians armed with machetes, who lay in wait outside the stadium.[17]

At the same time, members of the civilian gang, which is now known as the Little Machete Army, moved methodically through the spectators, lifting up their heads one by one in

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et al., *Haiti: Soccer Slayings*, N.Y. Times, *available at* http://video.nytimes.com/video/2006/01/27/world/1194817121275/haiti-soccer-slayings.html ("In late August 2005, at this soccer match, Haitian police in uniform swept through the crowd where investigators say they targeted people for summary execution outside the gates.").

[10] Declaration of Jean-Pierre Frantzy, ¶ 3; Haitian Police Report, *supra* note 2, ¶ 7, 10; *Remise symbolique d'armes à feu aux forces de l'ordre à Martissant*, RADIO METROPOLE HAITI (Mar. 20, 2006) *available at* http://www.metropolehaiti.com/metropole/full_une_fr.php?id=11221&action=print. During the period of political instability in 2004-2005, the PNH often wore masks or dressed in black when perpetrating extrajudicial arrests and murders in an attempt to conceal their identities. IACHR Report, *supra* note 2, ¶ 101.

[11] Declaration of Jean-Pierre Frantzy, ¶ 9; Declaration of Frantzco Joseph, ¶¶ 5,7; Haitian Police Report, *supra* note 2, ¶ 10. In many reported instances during 2004-2005, such abuses by the PNH were committed in collaboration with illegal armed gangs. IACHR Report, *supra* note 2, ¶ 119. This armed civilian group is now referred to as "Lame Ti Manchèt" ("The Little Machete Army"). Reed Lindsay, *Gang killings may be political*, The Washington Times (July 14, 2006) [hereinafter "Lindsay, *Gang killings*"], *available at* http://www.washingtontimes.com/news/2006/jul/13/20060713-100827-1789r/print/.

[12] Declaration of Jean-Pierre Frantzy, ¶ 4; Adams, *Haiti police accused*, *supra* note 7.

[13] Declaration of Jean-Pierre Frantzy, ¶ 4; Declaration of Frantzco Joseph, ¶ 6. Haitian Police Report, *supra* note 2, ¶¶ 3, 6, 7; Delva, *U.N. to investigate*, *supra* 7; IJDH August 24, 2005 Letter, *supra* note 4.

[14] Haitian Police Report, *supra* note 2, ¶ 16; Declaration of Jean-Pierre Frantzy, ¶ 4.

[15] Declaration of Jean-Pierre Frantzy, ¶ 5; Declaration of Frantzco Joseph, ¶ 8; Haitian Police Report, *supra* note 2, ¶¶ 7, 8, 10, 12 (Nov. 7, 2005). IJDH August 24, 2005 Letter, *supra* note 4.

[16] Declaration of Jean-Pierre Frantzy, ¶ 5.

[17] Haitian Police Report, *supra* note 2, ¶ 9, 10, 32.

order to identify "bandits" from Grand Ravine.[18] After the gang members identified a "bandit," they would hack the person with machetes or police officers would shoot the person.[19] For some time after the match had been interrupted, the police and the Little Machete army continued to patrol the Martissant neighborhoods in search of the alleged "bandits" they sought.[20]

Despite the police's assertion that they were searching for "bandits"[21] during the attack, the police called the Aristide-aligned spectators they targeted "Chimè Gran Ravin" and "Rat pa caca" (slang terms for Lavalas supporters).[22] Additionally, although the police claimed that gunfire was exchanged between police and the alleged bandits, eye witnesses maintain that the gunfire came only from police and that there was no return fire.[23]

Witnesses report that bodies were found in areas along the edge of or adjoining the stadium. Bodies were also found lying on the complex's basketball court and on the corridors around the church.[24] Some victims are believed to have suffocated in the stampede of people trying to exit the stadium.[25] There were also reports that the police tried to dispose of the bodies and cover up the number of people killed at the soccer stadium. A number of eye witnesses reported that several police ambulances quickly carried away the corpses.[26] Some bodies were stuffed in toilets in the stadium.[27] Additionally, victims who the police and the Little Machete Army targeted were later found dead in the local morgue.[28]

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[18] Haitian Police Report, *supra* note 2, ¶ 10.
[19] Luce, *Another tragedy*, *supra* note 7.
[20] Haitian Police Report, *supra* note 2, ¶ 10.
[21] Haitian Police Report, *supra* note 2; Michel D., *Haïti, les responsables d'un massacre toujours impunis*, Amnesty International (Jan. 7, 2007).
[22] Declaration of Jean-Pierre Frantzy, ¶ 13; Luce, *Another tragedy*, *supra* note 7.
[23] Haitian Police Report, *supra* note 2, at page 23 (discrediting police claims of an exchange of fire by questioning, "If there was an exchange of fire, how come in the rank of the Police no one was touched? Also, why was neither of the police vehicles touched?").
[24] *Id.*
[25] IJDH August 24, 2005 Letter, *supra* note 4.
[26] Haitian Police Report, *supra* note 2, ¶¶ 17, 18, 23, 29.
[27] IJDH August 24, 2005 Letter, *supra* note 4.
[28] Declaration of Jean-Pierre Frantzy, ¶ 10; Haitian Police Report, *supra* note 2, ¶2.

It is difficult to determine how many people were killed that day. Some news sources estimated that up to 30 people lost their lives in the carnage that day.[29] AUMOHD and the CSJ have corroborated the deaths of at least twelve people at the soccer match on August 20, 2005, through autopsy reports, interviews with witnesses, death certificates, human rights reports, news reports, and the official police investigation.

On the following day, several uniformed police officers in police trucks arrived in Grand Ravine.[30] Accompanying these officers were some of the same gang members from the day before, carrying the PNH-engraved machetes.[31] Witnesses of the attack at the soccer match recognized the civilians as the same ones who had committed the attacks the day before.[32]

As residents saw the group approaching, many attempted to flee into the mountains.[33] Arens Laguerre, a journalist and Lavalas party activist who was barely able to escape from his home before the assailants arrived, overheard the police exclaim, "La se kay yon rat" ("there is the house of a rat").[34] He and others watched as the machete-wielding civilians forcibly removed

[29] Adams, *Haiti police accused*, *supra* note 7; Delva, *U.N. to investigate*, *supra* 7 (stating as many as 30 people may have been killed); *see also* IJDH August 24, 2005 Letter, *supra* note 4 ("The most common estimates of deaths range between 25 and 30"); Michel D., *supra* note 21 (affirming more than 20 persons were killed). *But see Haitians 'killed in police raid,'* BBC News (Sept. 2, 2005) *available at* http://news.bbc.co.uk/2/hi/americas/4208258.stm (stating at least nine people were killed). Thierry Fagart, chief of the Human Rights Section of the U.N. mission in Haiti, confirmed that there were at least nine deaths but also noted that the number of deaths was difficult to confirm because "bodies are often dumped in the hills outside the city." Mozingo, *Alleged attacks*, supra note 8.

[30] Declaration of Frantzco Joseph, ¶ 10; IJDH August 24, 2005 Letter, *supra* note 4; Haitian Police Report, *supra* note 2, ¶ 8.

[31] IJDH August 24, 2005 Letter, *supra* note 4; Declaration of Jean-Pierre Frantzy, ¶ 11.

[32] *Id.*; *see also* Haitian Police Report, *supra* note 2, ¶ 8; *Haiti: Activist's killing shows need for disarmament programme*, Amnesty International (Sept. 28, 2006), *available at* http://www.amnesty.org/en/library/asset/AMR36/012/2006/en/99eca126-d3eb-11dd-8743-d305bea2b2c7/amr360122006en.html (reporting that the "the 21 August attacks carried out in Grand Ravine by the same armed gang" that conducted the August 20 operation); Declaration of Frantzco Joseph, ¶ 10.

[33] Declaration of Jean-Pierre Frantzy, ¶ 11; Declaration of Frantzco Joseph, ¶ 11.

[34] IJDH August 24, 2005 Letter, *supra* note 4. Arens Laguerre is a journalist and cameraman for Télé Ti Moun, a television station founded by the Aristide Foundation for Democracy. Police had previously detained him without charge in 2004. Committee to Protect Journalists, *Attacks on the Press in 2004 - Haiti*, Feb. 2005, *available at* http://www.unhcr.org/refworld/docid/47c566da23.html.

suspected Lavalas supporters from their homes and then burned them to the ground.[35] AUMOHD and the CSJ have confirmed that at least eleven houses were burned down through interviews with witnesses, photographs of the homes, and other independent reports.

2. Investigations into the August 2005 massacre were ineffectual and failed to afford remedies to the victims

In the immediate aftermath of the events on August 20 and 21, 2005, various officials promised adequate investigations into the attacks. For instance, a few days after the attacks, Lt. Col. Philippe Espie, the head of MINUSTAH in Haiti, announced that the United Nations ("UN") mission in Haiti would launch an inquiry into the events.[36] UN Civilian Police declared they would investigate the origin of the machetes to determine who orchestrated the attacks.[37] Thierry Fagart, chief of the Human Rights Section of the UN mission in Haiti, also said that his office was investigating the incident by interviewing witnesses of the massacres and viewing footage of the massacre in Martissant.[38] On September 6, 2005, AUMOHD met with Mr. Fagart to make a plan of joint action to continue with the investigation.[39] Since much of the evidence was not made public, the support of the Haitian government was essential to the implementation of the plan. [40] Despite the promises made, not one of these entities ever publicly released a report or shared any of the findings from their investigations.

The Inspector General of the PNH also initiated an internal investigation since members of the PNH were involved in the incidents.[41] As a result, Renand Etienne, the former Central

[35] *Id*; Declaration of Frantzco Joseph, ¶ 12; Declaration of Jean-Pierre Frantzy, ¶ 12.
[36] Delva, *U.N. to investigate*, *supra* 7.
[37] Mozingo, *Alleged attacks*, *supra* note 8.
[38] *Id*.
[39] The joint action plan included determining those who were killed/wounded, protecting the witnesses and relatives of the victims, accompanying the relatives as they gave declarations, answering questions regarding the autopsies and assisting in preparation of funerals. Evel Fanfan, *Keep Your Eyes on the Martissant Massacre*, *available at* http://ijdh.org/articles/article_grande_ravine_10-4-05.php.
[40] Declaration of Evel Fanfan, ¶ 5.
[41] Haitian Police Report, *supra* note 2, ¶ 13.

Director of the Administrative Police, and Carlo Lochard, Division Commissioner of Police and the Director of the Western Department, were arrested for their serious misconduct that led to the violence against residents of Grand Ravine.[42] The Inspector General also recommended that nearly a dozen other officers be terminated from their positions and that six others be suspended for sixty days without pay.[43] While Carlo Lochard and eleven police officers were suspended, not one of the officers involved in the massacre was ultimately terminated for their actions that day.[44]

On September 6, 2005, AUMOHD also sent a letter to Jean Daniel Audin, the prosecutor of the trial court (*Commissaire du Gouvernement de la Tribunal de Première Instance*), requesting authorization for the autopsies of six victims of the massacre and demanding legal action against the authors and accomplices of the massacre.[45] On September 8, 2005, the prosecutor granted the request for the autopsies.[46] That same day, the prosecutor asked the Central Directorate of Judicial Police ("CDJP") to investigate the events that occurred at Martissant on August 20, 2005, pursuant to §§ 22, 36, and 41 of the Code of Criminal Procedure (*Code d'Instruction Criminelle*).[47]

In response to a CDJP request, on September 19, 2005, Carlo Lochard submitted a partial list of twenty officers that were under his command and had participated in the operation at Martissant.[48] Renand Etienne also submitted five names from the Intervention and Law

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[42] *Interpellation de deux anciens officiers supérieurs de la Police nationale*, Radio Metropole Haiti (Nov. 7, 2005), *available at* http://www.metropolehaiti.com/metropole/full_poli_fr.php?id=10717.
[43] *Id.*
[44] Haitian Police Report, *supra* note 2, ¶ 35.
[45] Exhibit D.
[46] Exhibit E.
[47] Haitian Police Report, *supra* note 2, Legal Framework & ¶ 1.
[48] *Id.* at ¶¶ 14, 15 ("List of the police officers who participated in the operation at Martissant: DDO 12: Jean Floran Matthieu, 99-12-03-05558, A4, Horat Thermy, 99-12-06-05639, A2, Destin Niclès, 03-14-04-06158, A1; Back up DDO: Blanchard Médard 95-04-17-01221; Fils-Aimé Michelet, 03-14-08-06499, A1, Louis Nakel, 11-PP-0183; DDO 14: Clairsaint Steevenson, Lafalaise Jean Fednel, 04-15-01-06920, A1, Lindor Grévy, 11-PP-0993, A3,

Enforcement Unit (*Corps d'Intervention et du Maintien d'Ordre* or CIMO) and the names of three officers from SWAT Unit 3 who were under his command and also involved in the operation at Martissant.[49]

The CDJP released its Official Police Report on November 11, 2005. Its findings included the following:

- The leaflet circulated before the match entitled "The Police + the People = Solution" gave rise to a presumption of a conspiracy between police agents and Martissant residents.[50]
- Johnny Descollines, the international soccer star present at the stadium on August 20, 2005, reported that police had approached him when they entered the stadium and told him he should hide as soon as he heard shots fired.[51]
- 95% of officers interviewed admitted that they did not know the identities of the "bandits" they were allegedly sent to arrest.[52]
- Police officers had fired upon the crowd on August 20, 2005.[53]
- Police officers were responsible for the deaths of at least seven people.[54]
- Although police claimed there was crossfire with the gang members targeted in the operation, there were no police injuries or property damage to their vehicles.[55]

Gaspard Jean Michel, 11-PP-0734, B3; BI Portail: Duclair Gaby, 95-05-07-01949, A2, Civil Réginald, 99-12-01-05485, A1, Letelier Jocelyn, 95-07-09-03600, A3; BI PAP: Clautaire Smay, 95-02-09-00613, A4, Isaac Cedenier, 95-07-06-033355, A3, Jérôme Descomes, 03-14-04-06153, A1, Antoine Hielson, 04-15-03-06991, A1, Jean Ronel, 99-11-04-05435, A2, Pierre Mégène, 03-14-06-06372, A1; BI Salomon: Jean Lauture, 95-06-09-02820, B3").

[49] *Id.* ("CIMO: Roody Pétion, Leader, Jean Avia Lafleur, Gaudy Salomon, Pascal Edgard, Lindor Guilner; SWAT 3: Lucksonne Janvier, Leader, Robenson Fortuna, Djuly Jean-Baptiste").

[50] *Id.*, ¶ 4.

[51] *Id.*, ¶ 12.

[52] *Id.*, ¶¶ 18, 19, 21.

[53] *Id.*, ¶ 33 (Found assault rifle AR-15 (M-16) utilized by officers of CIMO was shot on August 20, 2005).

[54] *Id.*

[55] *Id.*, at page 23.

- From the beginning of the investigation to the end, the Director of the Western Department lied to the official investigating the incident.[56]

The report concluded that the operation was conducted illegally and that Commissioner Lochard and Renan Ettiene planned and executed the operation on August 20 and 21, 2005.[57] The report further recommended that certain police officers and members of the Little Machete Army should be prosecuted for murder and assault with a deadly weapon.[58] As a result of the CDJP investigation, seventeen police officers were initially arrested. [59]

The Prosecutor submitted the case to Instruction Judge Perez-Paul to perform a more in-depth investigation into the wrongdoing of the police officers in order to determine if there was sufficient evidence to proceed to trial.[60] Despite assurances that witnesses and family members of the victims would be called to testify before the trial court, they never were.[61] In addition, although Haitian law provides that an Instruction Judge only has three months to investigate a case, in the spring of 2006, over six months after the case was assigned to him, Judge Perez-Paul exercised his discretion under Haitian law to release the defendants pending further investigation.[62]

When Evel Fanfan, the President of AUMOHD, learned that the officers had been released, he called the clerk of the court. The clerk informed him that there was no ruling and

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[56] *Id.*, ¶ 33.
[57] *Id.*, ¶ 35.
[58] *Id.*, Finding of Facts on page 18.
[59] Declaration of Evel Fanfan, ¶ 8.
[60] Article 35 of the Haitian Penal Code; Declaration of Evel Fanfan, ¶ 9.
[61] Declaration of Jean-Pierre Frantzy, ¶ 14.
[62] Article 7 of the Law of July 29, 1979; *Liberation of 7 of the higher executives and police officers accused of involvement in the Grand Ravine massacre: prisoners of opinion are rotting in prison*, Association Haitienne de Presse (Mar. 10, 2006), *available at* http://ijdh.org/articles/article_recent_news_3-14-06b.php. Etienne was released the following month. *Libération d'un ancien directeur de la Police administrative*, Radio Metropole Haiti (Apr. 17, 2006), *available at* http://www.metropolehaiti.com/metropole/full_poli_fr.php?id=11318. Declaration of Jean-Pierre Frantzy, ¶ 14. Declaration of Evel Fanfan, ¶ 10.

refused to disclose the reason for their release.[63] Because the Instruction Judge never rendered a judgment, the Petitioners were unable to file any appeal. In addition, victims and their next-of-kin were also unable to seek civil damages, which in Haiti are only awarded after there is a final determination of guilt in a criminal case.[64]

3. Failure of the State to prosecute perpetrators of the August 2005 massacre emboldened armed gangs to carry out continued attacks in Grand Ravine

After the perpetrators went unpunished, the Little Machete Army was emboldened and continued intimidating the Grand Ravine community. Even at the funerals of the victims, the Little Machete Army taunted family members and friends of the victims, calling them Lavalas scum as they entered the church.[65]

On July 6, 2006, the Little Machete Army perpetrated another brutal massacre in the neighborhood of Grand Ravine.[66] During that evening at approximately 10 p.m., the Little Machete Army surrounded the neighborhood from both sides, entrapping the residents of Grand Ravine.[67] Members of the Little Machete Army lured Grand Ravine residents out of their homes by yelling "[w]ake up, wake up, we're being attacked!"[68] As the victims stepped out of their homes, the gang members attacked them with machetes or shot them.[69] The assaults continued into the morning, when the gang set homes ablaze.[70] News sources estimate that over twenty

[63] Declaration of Evel Fanfan, ¶ 11.
[64] Article 3 of the Code of Criminal Procedure (*Code d'Instruction Criminelle*); *See also* Cass. 22 août 1859 (En droit l'exercice de l'action civile qui naît d'un crime ou d'un delit, est essentiellement subordonné à l'exercice de l'action publique. La partie privée ne peut poursuivre son action soit devant le tribunal criminel, soit devant les tribunaux correctionnels, lorsque le Ministère public n'agit point.)
[65] Declaration of Jean-Pierre Frantzy, ¶ 13.
[66] Lindsay, *Gang killing*, *supra* note 11; Declaration of Jean-Pierre Frantzy, ¶ 15; Declaration of Frantzco Joseph, ¶ 13.
[67] Declaration of Jean-Pierre Frantzy, ¶ 15; Declaration of Frantzco Joseph, ¶ 13.
[68] Lindsay, *Gang killing*, *supra* note 11; Declaration of Frantzco Joseph, ¶ 14.
[69] *Id*.
[70] *Id*. at ¶ 13.

homes were burned down.[71] AUMOHD has documented at least thirty.[72] Between sixteen to twenty-one people were murdered, most killed "execution-style" with a single shot to the head.[73] Among the dead were three women and four children.[74] Hours after the attack, residents of Grand Ravine, morgue workers, and UN peacekeepers carried the corpses of victims who were left to die in the mountains down to the community and piled their lifeless bodies on one of the neighborhood's main thoroughfares.[75]

According to the press, Police Chief Mario Andresol suspected the attacks were related to the killings in August 2005.[76] Port-au-Prince Justice of the Peace Jean Gabriel Ambrose remarked that the victims all appeared to have been innocent.[77] UN military Haitian police and the PNH were deployed to the area to avoid further confrontations between the groups.[78] The CDJP in collaboration with the Major Crimes Unit of the UN Police (UNPOL) opened an investigation into these incidents.[79] On July 15, 2006, the government allegedly issued arrest

[71] *Massacre de Grand-Ravines: les quartiers impliqués se rejettent la responsabiilité de ces violences*, Radio Metropole Haiti, (July 12, 2006), *available at* http://www.metropolehaiti.com/metropole/full_une_fr.php?id=11616&action=print (estimating that about twenty homes were burned).

[72] AUMOHD, *Ce Dossier Contient la Liste des Personnes Assassinées et Celles qui ont Leurs Maisons Brulées le 21 Août 2005, les 7 Juillet, 17 et 27 Juillet 2006* (Sep. 2012) . On file with the CSJ and AUMOHD.

[73] Lindsay, *Gang killing*, *supra* note 11; *Affrontements entre gangs armés dans le quartier de Grand Ravine*, Radio Metropole Haiti (July 8, 2006), *available at* http://www.metropolehaiti.com/metropole/full_une_fr.php?id=11597&action=print. MINUSTAH estimated that 16 persons were killed and three were injured but did not rule out the possibility that there were other victims of the attacks. *16 personnes tuées lors d'affrontements entre gangs armés à Grand Ravine*, Radio Metropole Haiti (July 8, 2006), *available at* http://www.metropolehaiti.com/metropole/archive.php?action=full&keyword=16+personnes+tue&sid=0&critere=1&id=11598&p=6.

[74] Lindsay, *Gang killing*, *supra* note 11;

[75] *Id.*; Declaration of Jean-Pierre Frantzy, ¶ 16.

[76] Lindsay, *Gang killing*, *supra* note 11.

[77] *Id.*

[78] *Le gouvernement lance des poursuites judiciaires contre des chefs de gangs*, Radio Metropole Haiti (July 15, 2006) *available at* http://www.metropolehaiti.com/metropole/full_poli_fr.php?id=11627; *16 personnes tuées lors d'affrontements entre gangs armés à Grand Ravine*, Radio Metropole Haiti (July 8, 2006), *available at* http://www.metropolehaiti.com/metropole/archive.php?action=full&keyword=16+personnes+tue&sid=0&critere=1&id=11598&p=6;

[79] *Id.*

warrants against the gang members involved in the killings in Grand Ravine but refused to disclose their identities.[80]

On July 26, 2006, rumors surfaced that the Little Machete Army was planning another attack on Grand Ravine later that night.[81] Using the same tactics they did on July 6, 2006, the perpetrators ran through Grand Ravine that evening yelling that the neighborhood was under attack in order to scare the residents out of their homes.[82] When they stepped out of their homes, the victims were met with gunfire.[83] Once again, homes were set on fire by the gangs, leaving residents with no choice but to leave Grand Ravine with only the belongings they could quickly recover from their homes.[84] About 300 residents found refuge at a makeshift refugee camp run by the Haitian Evangelical Baptist Union three miles from Grand Ravine.[85] Conditions at the camp were crowded and food was scarce.[86]

UN officials noted that the coordinated nature of the violence suggested an attempt to stir chaos by well-armed, politically aligned gangs.[87] Police were not present to prevent the violence within Grand Ravine in spite of assurances by officials to the contrary.[88] Peacekeepers that were present claimed they did not shoot at gang members because civilians were present.[89]

In response to the ongoing violence, in August 2006, AUMOHD and family members of victims of the 2005 massacre established the Grand Ravine Community Council for Human

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[80] *Le gouvernement lance des poursuites judiciaires contre des chefs de gangs*, Radio Metropole Haiti (July 15, 2006), *available at* http://www.metropolehaiti.com/metropole/full_poli_fr.php?id=11627.
[81] Declaration of Frantzco Joseph, ¶ 14.
[82] *Id.*
[83] *Id.*
[84] Myrna Domit, *Hundreds of Haitians leave slum to escape gang violence,* Associated Press (July 27, 2006) [hereinafter "Domit"].
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] Declaration of Jean-Pierre Frantzy, ¶ 17.
[89] Domit, *supra* note 84.

Rights ("CCDH").[90] On September 21, 2006, Bruner Esterne, President of CCDH was murdered by three unknown individuals when he was on his way home from a meeting with Evel Fanfan concerning the massacres that plagued the Grand Ravine community.[91] Esterne was not only an eyewitness to the August 20, 2005 massacre, but his home was also pillaged and burned on August 21, 2005.[92]

Evel Fanfan appeared on national radio to condemn Esterne's slaying.[93] Days after Esterne's murder, Mr. Fanfan received a call from a man who identified himself as "Jeanjean" and warned him that people who advocate for justice in Grand Ravine would "pay for it."[94] Staff at AUMOHD began to fear for their safety, due to their work on the Grand Ravine case.[95] Their work on the case was severely hindered as victims were intimidated from seeking justice for the harms committed against them and AUMOHD staff feared going to work.[96]

After Esterne's murder, AUMOHD wrote to Claudy Gassant, Government Commissioner and President of the Court of First Instance, soliciting an autopsy of Bruner Esterne and requesting that legal action be taken against the perpetrators and accomplices of the murder.[97] To date, no one has been charged for Esterne's death.

[90] *Haiti: Fear for safety/death threats*, Amnesty International (Jan. 11, 2008) [hereinafter "Amnesty International, *Fear*"], *available at* http://www.amnesty.org/en/library/asset/AMR36/002/2008/en/2dd52430-c072-11dc-ac4a-8d7763206e82/amr360022008eng.html. The Community Council for Human Rights (CCDH) in Grand Ravine is one of several councils established as grassroots volunteer groups whose mission is to "promote peace, security and social justice within the population of those areas deemed vulnerable in the field of human rights."
[91] Declaration of Evel Fanfan, ¶15; Amnesty International, *Fear*, *supra* note 90.
[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] Declaration of Evel Fanfan, ¶ 17.
[96] *Id.*
[97] Exhibit Q.

4. Victims of the Grand Ravine massacres have continuously and unsuccessfully sought to obtain justice from the Haitian government

In light of the continuing violence in Grand Ravine and the deadlock in the court, AUMOHD has repeatedly pursued alternative avenues to obtain justice for the residents of Grand Ravine, including writing numerous letters to government officials in regards to the case. Two days before the July 6, 2006 massacre, AUMOHD sent a letter to the Justice and Security Commission of the Parliament, copying the Chamber of Senate and Chamber of Deputies, seeking to bring their attention to the massacres that occurred on August 20 and 21, 2005 in Martissant and Grand Ravine.[98]

On August 2, 2006, following the July 2006 massacre, AUMOHD sent a letter to Secretary of State of Public Security, Luc Eucher Joseph, copying the General Director of National Police, the Ministry of Justice, the Chief General of MINUSTAH, the Human Rights division of MINUSTAH, and the Justice and Security Commission of the Parliament, asking for a meeting with the police, the judiciary, MINUSTAH, human rights organizations and the government in order to find a solution to the violence in Grand Ravine.[99] The Secretary of State of Public Security responded on August 25, 2006, confirming receipt of the August 2, 2006 letter, but stating that "unfortunately [his] agenda currently [did] not permit [him] to meet, however, in the proceeding days someone would contact [AUMOHD] for a meeting."[100]

When no one contacted AUMOHD to arrange a meeting, AUMOHD delivered a petition on September 27, 2006 to the Prime Minister, the President, the National Police of Haiti, and others, addressing the massacres of August 2005 as well as the massacres in July 2006. The petition requested, among other things, (1) the prosecution of all of those involved in planning

[98] Exhibit M.
[99] Exhibit N.
[100] Exhibit O.

and/or carrying out the Grand Ravine massacre; (2) the reinstitution of judicial proceedings in front of an impartial judge and a plan to provide security to all witnesses, victims, and residents of the Grand Ravine community; (3) the implementation of a procedure to obtain complete compensation for the damages suffered by the affected parties including the massacres, assassinations, and the burning of houses; (4) implementation of a comprehensive procedure to uncover the truth and to devise a plan to eliminate once and for all, the local, political, and foreign causes of these types of violent crimes.[101]

On March 5, 2007, AUMOHD wrote to the Judicial Counselor to request a copy of all documents of the case regarding all of the massacres in August 2005 and in July 2006. The letter indicated that despite AUMOHD's multiple appeals to the government of President Boniface Alexandre and Prime Minister Gérard Latortue, nothing had been done to compensate or provide justice to the victims of these massacres.[102] There was never any response to either the petition or the letter.[103]

Throughout 2007 and 2008, AUMOHD organized countless demonstrations, sit-ins, and press conferences in order to publicize the case.[104] On February 16, 2008, AUMOHD met with Prime Minister Jacques-Édouard Alexis to discuss the ongoing threat of violence in Grand Ravine. The Prime Minister agreed to work with AUMOHD to ease the violence and compensate the victims of the massacres. The Prime Minister ordered the Minister of Justice, Rene Magloire, to work with AUMOHD on the Grand Ravine case. However, none of this ever happened as the Haitian Parliament removed Prime Minister Alexis two months later.

[101] Exhibit P
[102] Exhibit R.
[103] Declaration of Evel Fanfan, ¶ ¶ 18, 19.
[104] *Id*., at ¶ ¶ 19, 21.

On June 20, 2009, AUMOHD sent a letter to the Court Clerk of the Court of First Instance of Port-au-Prince and copied the Chief Judge, Minister of Justice, and the Prosecutor. The letter noted that after the arrest of seventeen police officers, Judge Perez-Paul did not pursue the case and consequently the parents of the victims and witnesses were never summoned for depositions or interrogatories. AUMOHD requested that the Court examine its records to determine whether any judgment was rendered and, if so, that a copy of any existing decision be sent to AUMOHD.[105] The Clerk told AUMOHD to come back in a week, and when it did so, the Clerk refused to comment on whether a decision had been reached.[106] That same year, AUMOHD also organized another rally to protest the ongoing injustice in this case. It drew over a thousand people.[107]

After the January 2010 earthquake, on February 20, 2011, AUMOHD sent a letter to then Prime Minister Jean Max Bellerive, giving him a summary of the case and notifying him of the reports that officers of PNH were involved. AUMOHD informed the new Prime Minister that former Prime Ministers Jacques-Édouard Alexis and Michèle Pierre-Louis and the former Minister of Justice René Magloire had agreed to help create a plan for redress to the victims of the massacres but were dismissed by Parliament. AUMOHD then requested that the new Prime Minister now take up the issue.[108] Mr. Bellerive resigned shortly thereafter in May 2011 before taking any action on the case.[109]

In March of 2011,[110] AUMOHD again met with the Court Clerk, at which time AUMOHD was told that the Grand Ravine issue was too political and that his advocacy in this

[105] Exhibit T.
[106] Declaration of Evel Fanfan, ¶ 21.
[107] *Id*.
[108] Exhibit U.
[109] Declaration of Evel Fanfan, ¶ 22.
[110] Evel Fanfan notes that there was a gap in time in the meetings with the Court clerk because of the 2010 earthquake. Declaration of Evel Fanfan, ¶ 23.

case would get him into trouble. The Clerk also told AUMOHD, "we can't have a judgment against the police [in this case]."[111] To this day, AUMOHD has never received documentation of a decision issued by Judge Perez-Paul or an explanation as to why the officers were released prior to a final judgment. It also has not received any further communication from the clerk since March 2011, despite continued efforts to obtain a response.

V. HUMAN RIGHTS VIOLATIONS

1. The Republic of Haiti violated human rights protected in the American Declaration and American Convention

a. Haiti violated Petitioners' Rights to Life and Humane Treatment through its direct participation in the brutal massacre on August 20, 2005

Officials in the Haitian government are directly implicated in a violent attack that lasted for two days and resulted in numerous injuries and at least ten deaths of unarmed civilians. The Republic of Haiti is a party to the American Convention of Human Rights ("Convention"), which protects the rights to life and humane treatment, and should be held accountable for its direct violation of these rights through its officials' barbaric acts.

Article 4 of the Convention provides that "[e]very person has the right to have his life respected. . . . No one shall be arbitrarily deprived of his life."[112] The American Declaration of the Rights and Duties of Man ("Declaration") also protects the right to life, providing that "[e]very human being has the right to life, liberty, and the security of his person."[113] The Inter-American Court of Human Rights has found the right to life to be the most fundamental of rights,

[111] Declaration of Evel Fanfan, ¶ 23.
[112] American Convention on Human Rights [hereinafter, "Convention"], Nov. 21, 1969, O.A.S. T.S. No. 36.
[113] American Declaration of the Rights and Duties of Man [hereinafter, "Declaration"], art. I, OAS/Ser.L/V/I.4 Rev. 9 (2003).

as without it the enjoyment of other rights cannot be fulfilled.[114] The Haitian Constitution further enshrines the State's affirmative duty to guarantee the right to life.[115]

The Haitian National Police and its civilian attachés committed attacks that resulted in the deaths of numerous Haitian civilians. Eye witnesses describe how on August 20, 2005, police shot indiscriminately into crowd and assisted machete-wielding gang members to murder unarmed civilians at a soccer match. They also describe how the PNH marched on Grand Ravine the following day with the same group of armed civilians to hunt down the alleged bandits in their own community. Police officers acting in concert with armed civilians shot and hacked Grand Ravine residents and burnt down their houses. Through its direct participation in these crimes, Haiti violated the right to life of the victims of the Grand Ravine massacres.

Even taking at face value the PNH's assertion that it was planning to detain "bandits" during the August 20, 2005 soccer match—an assertion contradicted by the evidence—the Haitian government should be held accountable for the lives that were lost that day. Given the complete disregard for the safety of innocent bystanders by police, coupled with the violent motivations of the armed gangs, the police "operation" was prearranged for disaster. The PNH collaborated with a civilian gang that sought vengeance against Lavalas rivals, providing them with machetes and weapons for the operation. The heavily armed officers and their civilian army entered the soccer stadium for a match that attracted nearly 6,000 spectators and locked the gates behind them. The police officers went to the match when they knew they would not be able to identify these supposed bandits but would have to rely on the word of these gang leaders to identify them. In carrying out the ill-fated plan, the police willfully participated in the

[114] Villagrán-Morales et al. v. Guatemala ("Street Children"), Judgment, Inter. Am. Ct. H.R. (Ser. C) No. 63, ¶ 144 (Nov. 19, 1999).
[115] 1987 Constitution de la République d'Haïti, Mar. 10, 1987, art. XIX.

indiscriminate killing of many innocent people on August 20, 2005, none of whom were later identified as bandits.

In addition to the right to life, States have a responsibility to protect the right to personal integrity. Article 5(1) of the Convention provides, "[e]very person has the right to have his physical, mental and moral integrity respected." Section 2 reads in pertinent part, "[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment." The Commission has held that injuries that are near fatal clearly constitute a violation of this right. For instance, in *Hugo Bustios Saavedra (Perú),* when the Peruvian armed forces ambushed two journalists, one of whom was shot three times but survived, the Commission found that the injury sustained by the journalist who survived was "a clear case of impact on personal integrity in the terms of the American Convention."[116] Haiti has similarly violated the petitioners' right to personal integrity. A number of victims were very seriously injured by police officers and the armed gang during the August massacre, but managed to survive the attacks. The violent assault on these individuals, which resulted in physical and emotional injuries, was carried out in direct violation of their right to physical and mental integrity.

b. Haiti's failure to punish those responsible for the August 2005 massacre and subsequent attacks against Grand Ravine residents in July 2006 and provide them redress also constitutes a human rights violation

In addition to a state's affirmative duty not to directly violate human rights, the Inter-American Court of Human Rights has interpreted Article 1(1) of the American Convention[117] to require that states protect those persons within their jurisdiction from human rights violations,

[116] Hugo Bustios Saavedra (Perú), Report on the Merits, Inter-Am. Comm'n H.R., Report No. 38/97, Case 10.548 ¶ 65 (Oct. 16, 1997).

[117] American Convention on Human Rights, art. 1(1), http://www.oas.org/juridico/english/treaties/b-32.html. "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

even those perpetrated by non-state actors. Specifically, states have an obligation of "due diligence," which means that they must "prevent, investigate, and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation."[118] A states' responsibility to employ due diligence is particularly important when the right to life is implicated because of the positive obligation to take reasonable steps to prevent any situation that could result in arbitrary deprivation of life.[119] Even when responding to security concerns, states may not "resort to *any* means to attain its ends. The State is subject to law and morality."[120]

In addition to these direct actions by the PNH, Haiti violated the right to life by failing to prevent and investigate the attacks, and failing to punish the perpetrators of the violence. The limited and ineffective investigation of the massacre and the failure of the Haitian government to follow through with prosecution of those deemed responsible for the attacks permitted the perpetrators to remain at-large and continue intimidating and committing violent attacks against the Grand Ravine community in 2006. The Haitian government has made no attempts to prevent these continued attacks, prosecute the perpetrators of the attacks, or provide compensation to the victims and their families for the harm they suffered.

c. Haiti violated Petitioners' Right to Judicial Protection by failing to adequately investigate the crimes and remedy the victims

Article 25 of the Convention provides that "everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against

[118] *Manoel Leal de Oliveira Case*, Judgment,, Inter-Am. Ct. H.R. (Mar. 17, 2010) (citing to Velásquez Rodríguez v. Honduras, Judgment, Inter-Am. Ct. H.R., (Ser. C) No. 4, ¶ 188 (July 29, 1988).
[119] *Velásquez Rodríguez* at ¶ 188.
[120] *Villagrán Morales et al. Case* (The "Street Children Case"), Judgment, Inter-Am. Ct. H.R., ¶144 (Nov. 19, 1999) (emphasis added); In a case where Peru killed prison rioters and placed explosives in a building to pacify rioters, the Court held that the "disproportionate use of force" constituted an arbitrary killing by the State. *Neira Alegría et al. v. Peru*, Judgment, Inter-Am. Ct. H.R., ¶ 75 (Jan. 19, 1995).

acts that violate his fundamental rights."[121] Article 25 requires States to "ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state."[122]

The Commission has held that Article 25 requires States to undertake a "purposeful investigation" of alleged violations of fundamental rights. Such an investigation requires that a "competent state authority . . . undertake the investigation as a specific juridical duty and not as a simple matter of management of private interests that depends on the initiative of the victim or his family in bringing suit or on the provision of evidence by private sources, without the public authority effectively seeking to establish the truth."[123] When victims allege violations of protected, fundamental rights, authorities must act with "due diligence, i.e. with the existing means at its disposal, and . . . endeavor to arrive at a decision."[124] Under this standard, the formal existence of recourse in the State's domestic law is insufficient to establish its effectiveness.[125]

Specifically, the Court held in the seminal *Case of Velasquez-Rodriguez*, that "the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation."[126] This imposes a positive obligation on the State "to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate

[121] Convention, art. 25.
[122] *Id*.
[123] Raquel Marti Mejia v. Peru, Case 10.970, Inter-Am. Comm'n H.R., Report No. 5/96, OEA/Ser.L/V/II.91 doc. 7 ¶ 157 (1996).
[124] *Id.*
[125] *Id.*
[126] Velasquez-Rodriguez v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 166 (July 28, 1988).

punishment and to ensure the victim adequate compensation."[127] Thus, even in an instance where the state is not a primary actor, the state's failure to act with due diligence in preventing or responding to a violation adequately can lead to its international responsibility for that violation.[128]

In the instant case, the community of Grand Ravine is suffering ongoing harms attributable to Haiti's failure to provide petitioners with judicial protection. Although an investigation of the initial massacre of August 20, 2005 recommended the prosecution of the perpetrators, the Court did not provide "prompt recourse, or any other effective recourse" for those events as required by international law. Judge Perez-Paul inexplicably released those arrested in connection with the massacre and did not accept testimony from witnesses nor allow for participation from the victims' families. There was no further attempt by police to continue the investigation or make additional arrests, despite repeated efforts to press government officials to take such steps.

In the massacres of July 2006, investigation into the violations that occurred was limited and the State did not fulfill its duty to determine whether human rights violations occurred. Despite the fact that petitioners and their attorney, Evel Fanfan, continuously pressured the government to investigate, prosecute and afford remedies to the victims, Haiti failed to respond to these violations.

The Haitian government did not act with due diligence to ensure that a final decision was rendered in this matter. Because the Court never issued a final judgment, Haiti never imposed appropriate punishment against those who committed the heinous acts in Grand Ravine and did not provide compensation to the victims of those attacks as required by law. In contravention of

[127] *Id.* at ¶ 174.
[128] *Id.* at ¶ 172.

Article 25, the rights of the victims of the massacres were never determined by a "competent authority provided for by the legal system of the state."

d. Haiti violated Petitioners' Right to Personal Liberty by carrying out arbitrary and illegal arrests and detentions

Article 1 of the Declaration and Article 7 of the Convention establish the right to personal liberty and security. Article 7(2) of the Convention states, "No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto."[129] Article 7(3) of the Convention provides that "[n]o one shall be subject to arbitrary arrest or imprisonment."[130] The Commission has stated, "detention is arbitrary and illegal when not carried out for the reasons, and according to the formalities, established by law; when carried out without adherence to the standards established by law; and when it involves misuse of the authority to arrest."[131]

Haitian law clearly sets forth which acts and circumstances can result in arrest and detention. For example, pursuant to Article 24-2 of the Constitution of Haiti, "[e]xcept where the perpetrator of a crime is caught in the act, no one may be arrested or detained other than by written order of a legally competent official."[132] Article 24-3 lays out five preconditions for such an arrest to be lawfully carried out:

a. It must formally state the reason in Creole and in French for the arrest or detention and the provision of the law that provides for punishment of the act charged.
b. Legal notice must be given and a copy of the order must be left with the accused at the time of its execution;

[129] Convention, Art. 7(2).
[130] Convention, Art. 7(3).
[131] Yone Cruz Ocalio (Perú), Report on the Merits, Inter-Am. Comm'n H.R., Report Nº 112/00, Case 11.099, ¶ 28 (Dec. 4, 2000).
[132] 1987 Constitution de la République d'Haïti, Mar. 10, 1987, art. XXIV.

c. The accused must be notified of his right to be assisted by counsel at all phases of the investigation of the case up to the final judgment;
d. Except where the perpetrator of a crime is caught in the act, no arrest by warrant and no search may take place between six (6) p.m. and six (6) a.m.
e. Responsibility for an offense is personal, and no one may be arrested in the place of another.

The PNH violated the Constitution by failing to abide by the requirements laid out in Article 24-2 and 24-3, without which there is no legal justification for depriving a person of his or her liberty. Even assuming arguendo that the purpose of the operation was to arrest and detain the "bandits," there was no legal order naming the individuals or the reasons they sought to arrest them. In fact, the PNH admitted that upon carrying out the operation they did not even know whom they sought to arrest. The PNH never identified the provision of law under which any individual was being detained and no legal notice was ever filed. Furthermore, no one at the soccer match was perpetrating a crime, and therefore could not have been "caught in the act." Thus, the PNH deprived individuals of liberty in violation of Article 24 of the Constitution.

This case is similar to the *Juan Humberto Sánchez* case, in which the Court determined that the State had violated Article 7(2). There, Sánchez was twice detained by military agents in his home.[133] In contravention of its constitution, the Honduran government detained Sánchez without bringing him before a judge and without informing Sánchez or his family of the alleged crimes of which he was being accused.[134] The Court reiterated "that protection of liberty can safeguard both the physical liberty of the individual and his personal safety . . . , in a context where the absence of guarantees may result in the subversion of the rule of law and deprive those arrested of the minimum legal protection."[135] Because the Honduran government violated its

[133] Juan Humberto Sánchez, at ¶ 71(a).
[134] *Id.* at ¶ 79.
[135] *Id.* at ¶ 77 (internal citations and quotation marks omitted).

own constitution in detaining Sánchez, it also violated the right to personal liberty contained in Article 7(2) of the Convention.

In violating Haiti's legal preconditions for arrest and detention, the PNH thereby violated the right to personal liberty and security Article 7(2) of the Convention. The police illegally and arbitrarily arrested and detained several people that day. Some of these individuals were later found dead in the morgue.

The actions by the PNH also violated the prohibition on arbitrary arrest and imprisonment in Article 7(3) of the Convention. Not only were the arrests illegal, they were executed arbitrarily. In arresting these individuals, the PNH did not follow the formalities or standards outlined by Haitian law. Instead, the police indiscriminately arrested civilians as the 6,000 soccer game attendees attempted to flee the violence, a complete misuse of its authority. Furthermore, when the PNH entered the soccer stadium, they locked the gates behind them in order to carry out their operation without permitting the opportunity for escape. Given they did not suspect all of these attendees of being "bandits," this action in and of itself was an arbitrary imprisonment of thousands of innocent people who could not escape the violence that ensued. These detentions were not carried out for the reasons established by law, nor were they conducted according to the formalities and standards of Articles 24-2 and 24-3. Instead, the detention of the entire soccer stadium constitutes a flagrant misuse of authority to arrest or detain.

e. Haiti violated the Petitioners' Rights to Privacy, Property, and Inviolability of the Home when the national police unlawfully intruded into their homes and burned them to the ground

Article 11(2) of the Convention states, "No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation." Section 3 provides that everyone has "the right to the protection of the

law against such interference or attacks." Article 5 of the Declaration likewise protects "the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life."

Article 21 of the Convention provides, "Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. [But] [n]o one shall be deprived of his property except upon payment of just compensation."[136] The Commission has read Article 21 to guarantee protection against "any person interfering in enjoyment of that right."[137] To determine whether an interference with the right to property is lawful under the Convention, the Court has held that "it should be based on reasons of public utility or social interest, subject to the payment of just compensation, and be restricted to the cases and according to the forms established by law."[138]

In addition, the Declaration provides further protection specifically for the home under Article 9, which states, "[e]very person has the right to the inviolability of his home." The Commission has pointed out the frequent violations of this right that occur in the context of interventions into the home by state security forces.[139] In regards to illegal raids and forcible entries, the Commission has stated that "[t]his right, in addition to operating as a guarantee of the right to privacy, guarantees due process."[140] In other words, there can be no arbitrary entry into a home without a well-substantiated judicial warrant specifying the reasons for the intrusion.[141] According to the Court, the intrusions may be neither abusive nor arbitrary, and must be

[136] Convention, art. 21.
[137] Ivcher-Bronstein v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 74, ¶ 117 (Feb. 6, 2001).
[138] *Id.* at ¶ 128.
[139] IACHR Report, *Citizen Security and Human Rights*, ¶ 176 (Apr. 20, 2010).
[140] IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, ¶ 97
[141] IACHR Report, *Citizen Security and Human Rights*, ¶ 177 (Apr. 20, 2010).

appropriate, necessary, and proportional.[142]

Furthermore, "the Commission deems that member states not only have an obligation to enact domestic laws to clearly regulate the limits of what the police forces can do in this area, but also to properly train the members of the police force to equip them with the knowledge and the practical tools they need to conduct investigative procedures and curb violence and crime without unlawfully infringing upon the personal and family privacy and integrity of the individuals who live in a household."[143]

Here, not only did Haitian police fail to provide protection of the law against arbitrary and violent intrusions into the homes of Grand Ravine residents, police officers directly participated in these intrusions on August 21, 2005. That day, the police officers and the Little Machete Army went from house to house, and without warrant or probable cause, entered several of the homes they arbitrarily designated as the homes of "bandits." Then they forced the occupants outside and proceeded to burn the homes to the ground. There is no indication that the police carried out this unlawful raid with the prior approval of any judicial authority or any planning whatsoever. Therefore, these violent intrusions into the homes of Grand Ravine residents violated their right to privacy, inviolability of the home, and due process of the law.

The perpetrators attempted to justify their actions by stating they were seeking out "bandits" living in Grand Ravine. However, none of the individuals were ever charged with a crime. The Haitian government has not compensated the victims for this deprivation of property, and they have been foreclosed from seeking compensation through the Haitian court system due

[142] Tristán-Donoso v. Panama Case. Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 193, at ¶ 53 (Jan. 27, 2009).
[143] IACHR Report, *Citizen Security and Human Rights*, ¶ 176 (Apr. 20, 2010).

to its failure to prosecute the perpetrators of these crimes. Petitioners have therefore been deprived of the use and enjoyment of this property in violation of Article 21 of the Convention.

f. Haiti violated Petitioners' Rights to Freedom of Thought and Expression, Association, and Assembly, by targeting them for attack based on their political affiliation and preventing their access to information

Article 13 of the Convention states that everyone shall have the right to freedom of thought and expression, which includes the "freedom to seek, receive, and impart information and ideas of all kinds . . ."[144] Article 13(3) continues, "[t]he right of expression may not be restricted by indirect methods or means, such as abuse of government . . . or by any other means tending to impede the communication and circulation of ideas and opinions."[145] Article 4 of the Declaration protects "the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever."[146]

Additionally, Article 16 of the Convention states that everyone has the right to "associate freely for . . . political, . . . sports, or other purposes."[147] Article 22 of the Declaration guarantees "the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature."[148] The Court has defined freedom of association as "the right of the individual to join with others in a voluntary and lasting way for the common achievement of a legal goal."[149] Article 21 of the Declaration states that "every person has the right to assemble peaceably with others in a formal

[144] Convention, art. 13(1).
[145] *Id.*, art. 13(3).
[146] *Id.*, art. 4.
[147] *Id.*, art. 16.
[148] Declaration, art. 22.
[149] Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85, Inter-Am. Ct. H.R. (ser. A), ¶¶ 32, 33 (Now. 13, 1985).

public meeting or an informal gathering, in connection with matters of common interest of any nature."[150]

In the Inter-American system, the right to freedom of thought and expression is considered one of the most fundamental rights, and the Commission considers "as part of its doctrine that lack of freedom of expression is a cause that 'contributes to lack of respect for the other human rights.'"[151] The Commission and the Court have referenced the dual nature of this right as both an individual and collective right. The Commission has determined that this right includes "the freedom to inform oneself," which "entails the collective right of persons to receive information without distorting interference."[152] The Court has stated that "when an individual's freedom of expression is unlawfully restricted, it is not only the right of that individual that is being violated, but also the right of all others to 'receive' information and ideas. The right protected by Article 13 consequently has a special scope and character . . . [and] requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts . . . [and on the other] a collective right to receive any information whatsoever and to have access to the thoughts expressed by others."[153]

Additionally, the Commission, Court, and Office of the Special Rapporteur have determined that this right also encompasses the right of access to information.[154] Specifically, "victims and their relatives have the right to know with regard to information on serious violations of human rights in the archives of the State. This is the case even if the archives in

[150] Declaration, Art. 21.
[151] Hugo Bustios Saavedra (Perú), Report on the Merits, Inter-Am. Ct. H.R., Report No. 38/97, Case 10.548, ¶ 69 (Oct. 16, 1997), *citing to* IACHR, Ten Years of Activities 1971-1981, General Secretariat of the Organization of American States, Washington D.C., 1982; *see also Chapter III Inter-American Legal Framework of the Right to Freedom of Expression*, Annual Report of the Inter-American Commission on Human Rights 2008, (Feb. 25, 2008)
[152] *Hugo Bustios Saavedra (Perú)*, at ¶ 69.
[153] Advisory Opinion OC-5/85, Inter-Am. Ct. H.R., ¶ 30 (Nov. 13, 1985).
[154] *Report of the Office of the Special Rapporteur for Freedom of Expression*, Annual Report of the Inter American Commission on Human Rights 2010, Ch. III, ¶¶ 1, 6 (March 4, 2011) [hereinafter "IACHR Freedom of Expression Report"] .

question pertain to the security agencies or military or police agencies."[155] An exception to this rule is if the information could endanger national defense or security.[156] However, this exception is extremely narrow, and a State cannot argue confidentiality of information related to past atrocities in order to protect *present* national security issues under any circumstances, particularly during a democratic transition.[157]

Here, in carrying out the attacks on the Grand Ravine community, the police and civilian army interfered with and restricted the rights of the victims and the community as a whole to freely express and exchange their political ideas and values. The victims of Grand Ravine were targeted for attack, including the attacks of August 20 and 21, 2005, in order to discourage their support for the Lavalas party and pressure them to switch political parties.

Specifically, during the attack at the soccer stadium, the perpetrators referred to Aristide-aligned spectators as "Rat pa caca" (Lavalas scum). Victims were shot after being identified as "rats," and the flyer that was circulated before the game encouraged Martissant residents to attack the "rats from Grand Ravine" with the help of the police. The following day, the same group of perpetrators went to Grand Ravine identifying homes of suspected Lavalas supporters, saying "La se kay yon rat" (there is the house of a rat) and burning their homes.

Additionally, Bruner Esterne, President of CCDH was murdered in 2006 after meeting with Evel Fanfan regarding their ongoing effort to seek justice for the massacre of August 2005 and the subsequent attacks in July 2006.[158] After Fanfan went on national radio to condemn Esterne's death he received threats warning him not to speak out or he would "pay for it."[159]

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[155] *Id.*, at ¶ 1; *see also Chapter III Inter-American Legal Framework of the Right to Freedom of Expression*, Annual Report of the Inter-American Commission on Human Rights 2008, (Feb. 25, 2008).
[156] IACHR Freedom of Expression Report, *supra* note 154, ¶ 4.
[157] *Id.*, at ¶ 6 .
[158] Domit, *supra* note 84.
[159] Amnesty International, *Fear*, *supra* note 90.

When the Court of First Instance denied the victims and their families access to any information or documentation about the Instruction Judge's decision to release defendants involved in the August 2005 massacre, it further violated the right enshrined in Article 13 of the Convention. The limited exception to the right of access to information does not apply here because there is no evidence that release of this information would threaten Haiti's national security, nor has the Republic of Haiti claimed otherwise. Further, in light of the Commission's jurisprudence, Haiti cannot claim this exception in order to obstruct the investigation of past atrocities committed by its own agents. The mere fact that the release of information may have political implications does not establish grounds for restriction of this fundamental human right.

In *Myrna Mack-Chang v. Guatemala*, the Guatemalan Ministry of National Defense refused to provide the documents necessary to proceed with the investigation of an extrajudicial execution despite repeated requests for the information.[160] The Court adopted the Commission's ruling that "public authorities cannot shield themselves behind the protective cloak of official secret to avoid or obstruct the investigation of illegal acts ascribed to the members of its own bodies."[161]

By participating in the attacks on the Grand Ravine community, the Haitian government has also violated the peoples' rights to freely associate and assemble. The people of Grand Ravine have the right to band together in political support of Former President Aristide with the legal goal of promoting or maintaining his policies. They must be able to do this freely without interference from the State or private actors who wish to intimidate and pressure them into altering this association or their political goals. When the community of Grand Ravine was

[160] Myrna Mack-Chang v. Guatemala, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 101, ¶¶ 180-182 (Nov. 25, 2003). In this case, although an investigation by detectives from the Guatemalan police revealed that high level military officials were likely involved in the extrajudicial killing of Myrna Mack-Chang,the Guatemalan government refused to cooperate, and at times, actively obstructed the investigation into her death.
[161] *Id*. at ¶ 181.

repeatedly targeted for attack, the perpetrators violated their right to freely associate with fellow Aristide supporters and members of their community.

Ironically, when the citizens of Port-au-Prince gathered at the soccer stadium on August 20, 2005, they did so to support a "Play for Peace" match that was aimed at reducing gang violence in the area. While they came together in this attempt to promote peace, they were interrupted by police and civilians who then subjected them to egregious acts of violence. This conduct was a direct interference with both their right to freely associate and to freely assemble.

g. Haiti violated Petitioners' Right to Freedom of Movement and Residence when they were forcibly displaced after the attacks on their community

Article 22(1) of the Convention states, "[e]very person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law."[162] Article 8 of the Declaration also ascribes to every person "the right to fix his residence . . . and not to leave it except by his own will."[163] Under the Convention, the right can be circumscribed "only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others."[164] The Court has noted that this right is "an indispensable condition for free development of each person."[165] The Court concurred with United Nations Human Rights Committee General Comment No. 27 in finding that the right to freedom of movement and residence includes "the right of all those lawfully in the territory of a State to move about freely in that State and to choose their place of residence."[166]

[162] Convention, art. 22(1).
[163] Declaration, art. 8.
[164] Convention art. 22(3).
[165] Moiwana Community v. Suriname, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 134, ¶ 110 (Jun. 15, 2005).
[166] *Id.*

The Court has also repeatedly referred to the UN Guiding Principles on Internal Displacement to determine the scope and meaning of Article 22.[167] Internal displacement is "coerced or involuntary movement that takes place within national borders" and the reasons for flight can include generalized violence or human rights violations.[168] In cases of internal displacement, the "national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction."[169] The Principles also provide displaced persons with the right to request and receive protection and humanitarian assistance from national authorities without persecution or punishment for making the request.[170]

The jurisprudence of the Court highlights the vulnerability of persons who find themselves internally displaced.[171] Because of this state of vulnerability, the Court has held that under the Convention, states have a positive obligation to give displaced people preferential treatment and to take positive steps to revert the effects of weakness, vulnerability, and defenselessness, including those caused by private third parties.[172] Thus, international state liability derives from the State's "acts or omissions by any authorities or bodies of the State,

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[167] *Id.* at ¶ 111; Mapiripán Massacre v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 122, (Sept. 15, 2005); Chitay Nech and Others v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 212 (May 25, 2010); Guiding Principles on Internal Displacement, U.N. Doc. E/CN.4/1998/53/Add.2 (1998).

[168] The Brookings Institution Project on Internal Displacement, Handbook for Applying the Guiding Principles on Internal Displacement, at 5 (1999), *available at* http://www.brookings.edu/~/media/Projects/idp/Handbook%20in%20English.pdf.

[169] Guiding Principles on Internal Displacement, U.N. Doc. E/CN.4/1998/53/Add.2, 3(1) (1998).

[170] *Id*.

[171] Ituango Massacres v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (Ser. C) No. 148, ¶ 210 (July 1, 2006); Mapiripán Massacre, at ¶ 179. The significant negative effects of resettlement caused by forced internal displacement, in addition to its grave psychological repercussions for them, include: (i) loss of the land and of their houses, (ii) marginalization, (iii) loss of the household, (iv) unemployment, (v) deterioration of living conditions, (vi) more illness and higher mortality, (vii) loss of access to common property among the members of communities, (viii) food insecurity, and (ix) social disintegration, as well as impoverishment and accelerated deterioration of living conditions.
Id. at ¶ 175.

[172] Mapiripán Massacre, at ¶ 179.

whatever their hierarchical level, that violate the American Convention."[173] The Court has held that a showing of "support or tolerance by public authorities in the infringement of the rights embodied in the Convention or omissions that enabled these violations to take place" is sufficient to hold the State liable.[174]

In the *Case of Moiwana Community*, members of the armed forces of Suriname attacked a village in Moiwana and massacred over 40 men, women, and children, and then razed the village to the ground.[175] Since the State never prosecuted those responsible for the massacre, the surviving community members feared returning to the village.[176] The Court found that the State's failure to conduct an effective criminal investigation into the massacre constituted a *de facto* restriction on petitioners' freedom of movement and residence and undermined its obligation to "establish conditions, as well as provide the means required to enable [petitioners] to return voluntarily, in safety and with dignity."[177] Without an effective investigation that would end impunity for the attacks complained of, the petitioners had a "well-founded fear" of continued hostilities in their community.[178] The State has thus failed to ensure the rights of the massacre survivors to move freely within their country and choose where to live.[179]

Similarly, in the *Case of Chitay Nech*, a Mayan political activist was forcefully abducted by unknown armed assailants.[180] Despite the Guatemalan authorities' knowledge of his forced disappearance, the State did not carry out an effective criminal investigation and did not provide

[173] Gómez Paquiyauri Brothers v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 71 (July 8, 2004); Juan Humberto Sánchez, at ¶ 142; "Five Pensioners" v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 98, ¶ 163 (Feb. 28, 2003).
[174] 19 Tradesmen v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 141 (July 8, 2004); Juan Humberto Sánchez, at ¶ 44; Cantos v. Argentina, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 97, ¶ 28 (Nov. 28, 2002); Mapiripán Massacre, at ¶ 110.
[175] Moiwana Community, at ¶ 3.
[176] *Id*., ¶ 118.
[177] *Id*., ¶ 119-120.
[178] *Id*., ¶¶ 118, 120.
[179] *Id*., ¶ 121.
[180] Chitay Nech, at ¶ 2.

necessary security for his next of kin, who consequently were unable to return to their community due to safety concerns.[181] Hence, the Court found that petitioners' freedom was "limited by a grave *de facto* restriction."[182]

In the instant case, the residents of Grand Ravine have been displaced from their community against their will in contravention of Article 22. Many victims left the community following the attacks in August 2005 and July 2006 in which their homes were burned down. Others left Grand Ravine due to a well-founded fear that should they remain in the neighborhood, they could be subjected to the same destruction of property and arbitrary deprivation of life that their neighbors suffered.

The State should be held accountable for infringing on the victims' right to freedom of movement and residence. Although the Haitian authorities are obliged under international law to provide protection and humanitarian assistance to internally displaced persons, the State has provided neither to those displaced by the attacks in Grand Ravine. In addition, because the State has failed to provide an effective criminal investigation and final judgment against those responsible for the attacks in Grand Ravine, the State has created a situation in which the residents of Grand Ravine are unable to return home due to fears for their personal safety. These omissions constitute serious violations of the aforementioned rights.

2. The petition should be deemed admissible because it falls within the exceptions to exhaustion of domestic remedies provided in Article 46(2) of the Convention

Pursuant to Article 31 of the IACHR Rules of Procedure, prior to filing before the IACHR, the Petitioner is required to either exhaust domestic remedies or show that such action would be futile. In order to establish that pursuing domestic remedies would be futile, the petitioner must show that: (a) domestic legislation does not afford due process of law for the

[181] *Id.*, ¶¶ 148, 150.
[182] *Id.*

protection of the rights at issue, (b) there has been a denial of access to or prevention from exhausting the domestic remedies, or (c) there has been an unwarranted delay in rendering a final judgment pursuant to the procedures established by domestic law.

Although murder, accessory to murder, endangering the life of another, aggravated assault and battery are all crimes under Haitian law, the government has failed to adequately prosecute or punish those responsible for the crimes at issue in this case. Since the August 2005 massacres, Petitioners have made ongoing attempts to obtain justice under domestic law. As described above, AUMOHD has sent numerous letters to multiple government officers, court officials, and the prosecutor's office. AUMOHD also contacted three consecutive Prime Ministers to seek their support for the case and organized countless demonstrations, sit-ins, and press conferences. In September 2006, AUMOHD submitted a formal petition to then Prime Minister Jacques-Édouard Alexis requesting redress for the massacre. Despite these continuous efforts, the Haitian government never held the perpetrators of the massacres accountable and failed to provide adequate remedies to the victims of these atrocious crimes. Instead, Petitioners have been confronted at every stage with insurmountable obstacles to justice, including the court's secrecy regarding the release of the main perpetrators of the massacre and ongoing intimidation of Petitioners and their representatives. Furthermore, by refusing to inform Evel Fanfan and his clients whether or not a judgment was rendered, or provide them with any documentation of a decision, the victims and their families were prevented from exhausting remedies because they were unable to avail themselves of the right to appeal such a decision.

It has been over seven years since the events of August 20 and 21, 2005, and more than six years since Judge Perez-Paul released the defendants pending further investigation. However, to date, the Instruction Judge has never rendered a judgment on whether the case

should be sent to trial, despite Petitioners repeated efforts to obtain justice. This constitutes an unwarranted delay of justice, which has foreclosed the victims of the massacre from exhausting domestic remedies. Therefore, this case fits within the exceptions to exhausting domestic remedies under Article 31(2)(b) and 31(2)(c) of the IACHR Rules of Procedure and should be deemed admissible.

Alternatively, the Commission has found that the rule of exhaustion of domestic remedies does not require that petitioners seek remedies where their physical integrity would be at risk.[183] The victims of the Grand Ravine massacres and their representatives have long been intimidated by the perpetrators of the crimes due to the political implications of the case. Since Evel Fanfan began his advocacy for the victims and residents of Grand Ravine shortly after the massacre in August 2005, he started to receive phone calls threatening that he and his staff would "pay for" their efforts to obtain accountability. In addition to threatening Evel Fanfan and his staff, the callers also threatened his family, including his three children. In September 2006, Bruner Esterne, who was the President of the CCDH and whose home was burnt down on August 21, 2005, was murdered as he was leaving a meeting with Fanfan regarding the massacre.[184] Most recently, on Tuesday, October 23, 2012, as Evel Fanfan was leaving his office, he was prevented from driving home by two large vehicles blocking the street in either direction and then shot at by the driver of one of the vehicles. This assassination attempt was likely the consequence of AUMOHD's announcement of its plan to file this petition before the Commission at two press

[183] Plan De Sánchez Massacre v. Guatemala, Inter-Am. Comm'n H.R., Report No. 31/99, Case 11.763, *available at* http://cidh.org/annualrep/98eng/Admissibility/Guatemala%2011763.htm. The Commission in *Plan de Sanchez Massacre* found that petitioners were prevented from invoking domestic remedies for years where petitioners were intimidated before, during and subsequent to a massacre, Guatemala failed to meet complaints by survivors of a massacre with the measures of investigation required, and petitioners endured an unwarranted delay in the issuance of a final judgment. The Commission found the petition admissible and lodged within a reasonable time fourteen years later.

[184] Declaration of Evel Fanfan, ¶15.

conferences that same month.[185] After this incident, Evel Fanfan appealed to this body for precautionary measures.

In spite of these efforts at intimidation, the victims and their families have nevertheless continued in good faith to seek redress for their harms through the Haitian domestic legal system, but after nearly six years of inaction, they have realized that they will never achieve justice through the Haitian legal system.

3. The petition has been presented within a reasonable period of time

In cases where an exception to the requirement of prior exhaustion of domestic remedies applies, Article 32 of the Rules of Procedure indicates that petitions must be filed "within a reasonable period of time." In determining what constitutes a reasonable period of time, the Commission must make a case-by-case determination that is "mindful of the activity of the victims' next-of-kin to seek justice, the conduct of the state and the situation and context in which the alleged violation occurred."[186]

The time that has passed since the events in August 2005 and July 2006 is reasonable in light of the surrounding circumstances. First, the petitioners reasonably relied upon the Haitian government to carry out its investigation into the massacres, and to follow through with a criminal trial pursuant to that investigation. Second, the petitioners have made continuous efforts to move the case forward through ongoing communication with the Court, advocacy, and letters to various government officials. Third, surrounding circumstances, including ongoing political instability, ongoing harm and fear for safety, and the earthquake of January 2010, presented significant obstacles to petitioners' efforts to seek justice.

[185] Declaration of Evel Fanfan, ¶24.
[186] Community of Río Negro of The Maya Indigenous People and Its Members v. Guatemala, Inter-Am. Comm'n H.R., Report No. 13/08, Petition 844-05, *available at* http://cidh.org/annualrep/2008eng/Guatemala844.05eng.htm.

The IACHR has found similar delays reasonable in cases involving governmental massacres and failure to prosecute. For example, in the *Tibu Massacre* case, petitioners filed before the IACHR six years after the massacre took place. The Commission nevertheless found that the petition was filed within a reasonable period of time in light of "the context and characteristics of the . . . case" and "the fact that the criminal proceedings [were] still pending."[187]

Similarly, in *Community of Rio Negro*, a petition was filed against Guatemala in 2005, regarding massacres carried out by the Guatemalan Army against a Mayan community in 1982, more than two decades earlier. The Commission nevertheless found that the domestic remedies in place were insufficient to establish the criminal liability of all persons involved in massacres. The IACHR took note of the political instability, the danger faced by the petitioners, and the pendency of the investigation. In light of these circumstances, the Commission found that the more than 20-year-delay in filing was reasonable.

In the instant case, given the severe and complex nature of the crimes, it was reasonable for Petitioners to assume that the criminal investigation and proceedings would take a significant amount of time. Furthermore, Petitioners reasonably relied on Haitian law requiring that the government initiate and pursue criminal investigation and proceedings in cases of murder.[188] Therefore, even when the defendants were released, the Petitioners reasonably believed that a judgment was still forthcoming, pending further investigation.

Moreover, while waiting for the completion of the investigation, petitioners have made ongoing efforts to move the case forward. For example, when contact with the Court of First

[187] Tibú Massacres (Colombia), Inter-Am. Comm'n H.R., Report No. 51/10, Petition 1166-05 (March 18, 2010) *available at* http://www.oas.org/en/iachr/decisions/admissibilities.asp

[188] This is required pursuant to §§ 22, 36, and 41 of the Code d'Instruction Criminelle. Haitian Police Report, *supra* note 2, Legal Framework & ¶ 1.

Instance did not result in further action, AUMOHD tried to publicize the case and appeal directly to the office of the Prime Minister to request action. Despite promises made by various government officials, including the former Prime Minister Jacques-Édouard Alexis, no action was taken. Each time, petitioners reasonably relied on these promises and when each promise fell through, renewed efforts were made with government officials. Exacerbating these difficulties was the January 12, 2010 earthquake that devastated Port-au-Prince. Before pursuing international remedies, petitioners waited a reasonable period after the earthquake to allow the government officials to fulfill their promises of justice. However, it has been nearly three years since the earthquake and petitioners cannot wait any longer.

Additionally, this lengthy deprivation of the right to judicial protection and the continued forced displacement of Grand Ravine residents constitutes an ongoing harm that extends to the present day. As the Commission recently concluded in *Juvenile Offenders Sentenced to Life Without Parole v. the United States*, the Commission should find that this petition was lodged within a reasonable period of time in light of this ongoing harm.[189]

Furthermore, all of the Petitioners' efforts to obtain justice were made despite continual violence and threats of harm to both the victims and their legal representatives. Specifically, the human rights activist Bruner Esterne was killed for his efforts in the case. Evel Fanfan was told directly by the Clerk of the Court of First Instance that the case was too political and that his advocacy would get him in trouble. He has been repeatedly threatened and almost assassinated as consequence of his advocacy for the victims of the massacres. Moreover, the same armed groups carried out continued attacks and brutal massacres in Grand Ravine in order to further

[189] *Juvenile Offenders Sentenced to Life Without Parole v. the United States*, Inter-Am. Comm'n H.R., Report No. 18/12, Petition 161.06, ¶ 64 (Mar. 20, 2012) (holding that the deprivation of liberty of juvenile offenders sentenced to life without parole constituted an ongoing harm and thus the admissibilty requirement on timeliness was met.)

intimidate the population from seeking justice. Some of the residents of Grand Ravine have been forced to leave their homes because such acts of intimidation continue to this day.

The lapse of time in the present case is reasonable due to the ongoing harms committed against the community of Grand Ravine, the fear for their safety in pursuing domestic remedies, the devastation caused by the 2010 earthquake, and the continuous efforts made by petitioners to access justice. Therefore, this petition should be found to fall within the Article 31(2) exceptions to exhaustion, and having been filed within a reasonable period of time, should be found admissible.

VI. RELIEF REQUESTED

For the aforementioned reasons, CSJ and AUMOHD respectfully request that the Commission prepare a report setting forth all the facts and applicable law, declaring that the Republic of Haiti is in violation of its obligations under international law, and recommending that the Republic of Haiti:

a) Further investigate the facts of this case and prosecute the perpetrators of attacks on the residents of Grand Ravine;

b) Submit a formal apology to the victims of the massacres and their families;

c) Provide reparation to the residents of Grand Ravine whose homes were destroyed, who were injured, and whose relatives were killed during the massacres and attacks against their community in August 2005 and July 2006;

d) Mandate appropriate education and trainings for state agents in the Haitian criminal justice system—including law enforcement and prosecutorial authorities—on international human rights norms.

e) Erect a monument to honor the victims of the massacres;

f) Construct a community center for the residents of Grand Ravine in order to afford them the opportunity to rebuild the social and cultural connections that were ruptured due to the fear and violence associated with the massacres; and

g) Comply with any other remedies that the Commission deems appropriate.

The Petitioners would like to thank the Commission for its careful attention to this pressing matter.

Dated: December 13, 2012

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