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The Case of Jean-Claude Duvalier

On January 16, 2011, former president-for-life of Haiti, Jean-Claude "Baby Doc" Duvalier, returned to his homeland after nearly 25 years in exile. The government of Haiti responded by re-opening a 2008 investigation into alleged financial crimes, and several victims of serious human rights violations under the Duvalier government also came forward and filed complaints with the prosecutor. The investigation into Duvaliers alleged financial and human rights crimes is currently underway.

This report provides an overview of human rights violations under Duvalier, details the current status of the proceedings against him, including obstacles to a successful prosecution, and analyzes applicable Haitian and international law. We conclude that investigation and prosecution of the grave violations of human rights under Duvaliers rule is required by Haitis obligations under international law. While there are still obstacles to overcome, the case presents an historic opportunity for Haiti.

Successful prosecution of Duvalier is important not only for Duvaliers many victims, but also for Haitis struggling judicial system and for Haitian society more broadly. Bringing Duvalier to justice and giving him a fair trial could help restore Haitians faith in the justice system and the rule of law. A prosecution could also act as a deterrent to other leaders, both in Haiti and elsewhere, demonstrating that they can be held accountable for serious violations of human rights.

The challenges to fair and transparent prosecution of Duvalier, however, are enormous. Haitis judicial system is weak, the case requires continuing investigations and evidence-gathering, and significant procedural hurdles need to be addressed, in particular the mistaken view in some quarters that the prosecution should be barred by Haitis statute of limitations. As this report shows, those obstacles are not insurmountable. The success of the case will depend on the political will of the government of Haiti to uphold its obligations under international law and rigorously pursue what could be the most important criminal case in its history, and on the willingness of the international community to provide essential support now and as the case develops.

Under the leadership of Jean-Claude Duvalier, the government of Haiti relied on an extensive network of security forces to enforce its control through a pattern of human rights abuses, including:

Shortly after Duvalier fled the country in 1986, the new government established a commission to investigate the financial corruption of the Duvalier government and soon instituted criminal proceedings against Duvalier for financial crimes. In 2008, another investigation was opened and included crimes against persons. The government re-instituted these pending cases when Duvalier returned in January 2011. As of March 16, 2011, 19 Haitian victims of Duvalier also had filed complaints with the state prosecutor related to crimes against humanity and human rights violations.

Human Rights Watch has not seen any evidence that Duvalier was present when the murders, acts of torture, disappearances, or arbitrary detentions of suspects took place; however, physical presence at a crime scene is not necessary to establish criminal liability. Under international and Haitian law, Duvalier can be held criminally responsible via the doctrines of:

Duvaliers alleged crimes, including murder, torture, and false imprisonment, are serious crimes under Haitian law. Under international law, which is binding on Haiti and has been incorporated into Haitian law, Haiti has a duty to investigate and punish perpetrators of serious human rights abuses, a duty which cannot be undermined by statutes of limitations, amnesties, or other domestic legal obstacles. In addition, the continuous nature of several of the alleged crimes, namely enforced disappearances and false imprisonment, prevent their prescription, because the statute of limitations has not begun to run.

The investigation and trial of a former head of state for mass crimes committed between 25 and 40 years ago will be a complex endeavor. Further complicating the issue are the challenges currently facing the Haitian judicial system, including problems of capacity, limited resources, and political will. But all of these obstacles can be overcome:

This report is based on extensive archival research and interviews conducted during two Human Rights Watch visits to Haiti in February and March 2011. Some of the archival research was also conducted in the United States Library of Congress in Washington, D.C.

Human Rights Watch met with governmental officials to discuss the status of the prosecution, and interviewed local nongovernmental organizations, lawyers, journalists, and diplomats. Human Rights Watch also met with and conducted interviews with several victims who have filed complaints against Duvalier in domestic court.

This report draws heavily from legacy reports of Human Rights Watch (then named Americas Watch) and Amnesty International as well as the 1979 Inter-American Commission on Human Rights report.

Jean-Claude Duvaliers government perpetrated widespread crimes and human rights violations during his 15-year presidency. There is substantial evidence that military, paramilitary, and police officers committed these violations while under Duvaliers *de facto* and *de jure* control. In some cases, there is evidence that they acted under the direct order of Duvalier. Throughout Duvaliers 15-year rule, human rights organizations, foreign politicians, donor governments, diplomats, and the Inter-American Commission for Human Rights raised their concerns about these crimes. Thus, Duvalier was on notice and had knowledge that serious human rights violations were occurring under his command.

Jean-Claude Duvalier came to power in 1971 at age 19, succeeding his father as president-for-life. His father, Francois Papa Doc Duvalier (hereinafter Duvalier pre), executed hundreds of people, imprisoned hundreds more, and drove thousands into exile, while running the country with an iron fist according to US embassy officials.<sup>[2]</sup> Inheriting this brutal regime from his father, Duvaliers 15-year rule from 1971 to 1986 was marked by grave human rights violations against his challengers and criticism by opposition party members, trade unionists, independent journalists, university professors, and human rights activists and by an absence of fundamental freedoms.

The international community initially hoped that Jean-Claude Duvaliers government would be less brutal than his fathers. The United States Ambassador to Haiti at the time of Duvaliers ascension, Clinton Knox, suggested hopefully that new departures of this regime represent a general trend towards liberalization.<sup>[3]</sup> In cleaning up its image, the new government sought to reinvigorate the flow of international assistance that had tapered, and at times disappeared, under Francois Duvaliers government. Secretary of State for Defense and the Interior, Luckner Cambonne, sought to convince the United States of Duvaliers good intentions. In a meeting with Knox, Cambonne indicated that the [government of Haiti] record over Jean-Claudes first year in office is a good one and entitles the country to assistance from abroad.<sup>[4]</sup> The ambassador warned, however, that there remained a risk that [e]xpectations [of the populace] may rise to the point where the government will feel threatened and compelled to adopt repressive measures to keep the situation in check.<sup>[5]</sup> Despite the international communitys hope for a less repressive government, the pattern of abuses remained much the same.

As his father had, Duvalier relied on a network of security forces that enforced control through arbitrary arrests, which often led to prolonged, incommunicado detention, enforced disappearances, torture, and extra-judicial killings. Under Jean-Claude Duvaliers leadership, hundreds of Haitians were victims of extrajudicial killings or otherwise died from torture or as the result of inhuman detention conditions.<sup>[6]</sup> Many more were forced to flee the country, contributing to the modern Haitian *diaspora* that began to build under Duvalier pre.

As President for life of Haiti, Jean-Claude Duvalier served as head of state, head of government, and commander-in-chief of the armed forces and police.<sup>[7]</sup> A report by US Senator Edward Brooke following a visit to Haiti in 1977 concluded that [p]ower is concentrated in the hands of President Duvalier and a small palace guard.<sup>[8]</sup> He commanded the network of military and paramilitary organizations that committed a wide range of serious human rights violations, including arbitrary arrests, torture, disappearances, and extra-judicial executions. The security apparatus under Duvaliers command included several overlapping and conflicting units.<sup>[9]</sup> Within the army, there existed five special units, the Presidential Guard, the Lopards Corps (a counterinsurgency unit), the Port-au-Prince military police, which included a secret police, the Dessalines Battalion, and a unit at the National Penitentiary.<sup>[10]</sup> According to the US Embassy each of these special units took orders directly from the President.<sup>[11]</sup> In addition six geographical military departments were under the supervision of the chief of staff who was directly subordinate to the President for operations.<sup>[12]</sup>

The police were subordinate to the military. So-called Section Chiefs, deputized by the police, ruled Haitis rural areas, where most Haitians live. As a counterweight to the army, Duvalier controlled a paramilitary force of some 5,000 to 7,000 irregulars called the *Volontaires de la Securite Nationale* (Volunteers for National Security or VSN). Duvalier claimed to have abolished the force created by his father, popularly known as the *Tontons Macoutes* (bogymen in Creole) and responsible for all but eliminat[ing] the rule of law through extralegal executions, torture, arbitrary arrests, prolonged detention, and other human rights abuses.<sup>[13]</sup> In fact, Duvalier merely formally reconstituted the force under the name VSN.<sup>[14]</sup> In 1983, Human Rights Watch (then Americas Watch) found that the *Tontons Macoutes* continued to violate human rights in Haiti.<sup>[15]</sup>

The most feared force under Duvalier, however, was the civilian secret police, the Service Detectif (SD). Based on the grounds of the Presidential Palace, at the Casernes Dessalines, the SD were commanded by the chief of police of Port-au-Prince, who was also a member of the military, and were responsible for the detention and interrogation of all persons suspected of political offenses.<sup>[16]</sup>

Political offences were outlawed by a 1969 anti-communist law, according to which all communist activity was illegal and terrorists were declared to be outlaws; however, the law left the term undefined, allowing the government to selectively apply it against its critics.<sup>[17]</sup> This law punished expression or mere profession of certain ideas, even in private.<sup>[18]</sup> Individuals detained according to this law were known as political prisoners but in practice, while Duvaliers government used the law as a cover to detain individuals, it rarely formally charged many of them, instead holding them incommunicado and without access to legal remedies.<sup>[19]</sup> In 1984, Duvaliers government passed a law banning all groups which call themselves political parties, providing security forces additional grounds for arresting and detaining prisoners for their political beliefs.<sup>[20]</sup>

Documenting human rights abuses during the Duvalier government was difficult work.<sup>[22]</sup> Much of the day to day violence by the Duvalier government outside of the capital occurred unnoticed by the international community or the few human rights defenders that operated within Haiti, with only eight cities on the telephone network and few roads open year round.<sup>[23]</sup> Nevertheless, information did find its way out, establishing a pattern of human rights abuses that, most notably, included the use of a network of prisons to hold political prisoners in deplorable conditions, the use of torture against political prisoners, periodic enforced disappearances, and the systematic repression of the free press and political opposition.

Duvaliers government held hundreds of political prisoners, often for years at a time, shuffling them through a network of three prisons that had been established by his father: Casernes Dessalines, located on grounds of the presidential palace; Fort Dimanche; and the National Penitentiary. Together, these prisons have been referred to as the triangle of death. Indeed, based on assessments collected from former detainees, Amnesty

International estimated that due to prison conditions, disease, brutality, torture, and executions, 1 in 10 arrested Haitians died in the first days of their detention, and 8 in 10 prisoners did not survive more than two years.<sup>[25]</sup>

Duvalier used the triangle of death to silence political dissent. Political prisoners imprisoned under his father remained in the network, and new prisoners were arrested and entered into the system, with many disappearing or dying due to the harsh conditions of detention.<sup>[26]</sup> Prisoners were held without access to the judicial system or to their families. Some prisoners who survived remained in detention for six or seven years without charge.<sup>[27]</sup> and at least one prisoner Claude Rosiers spent 11 years in the triangle of death.<sup>[28]</sup>

Fort Dimanche most often served as the detention facility for long term political prisoners, and was infamous for its inhuman conditions. Cells that measured approximately 3 meters by 3 meters held up to 33 prisoners each, allowing each prisoner a space of only 30 centimeters.<sup>[29]</sup> Prisoners sometimes had to sleep in shifts, or in rows like sardines. One survivor explained how sometimes, if a new prisoner made an odd number in the cell, the extra person would have to squeeze in on one side; with dark humor the prisoners would joke that if they waited a few days, the problem would go away because at least one of them would die, making the number even again.<sup>[30]</sup>

Prisoners received very little food, with one prisoner estimating the ration constituted little more than 300 calories a day.<sup>[31]</sup> If and when prisoners were released, they often weighed a fraction of what they did when they entered Fort Dimanche.<sup>[32]</sup> Sanitation was poor, and communicable diseases easily passed among prisoners, who often shared the same plate and drinking glass; approximately 18 glasses served a population of 195 prisoners.<sup>[33]</sup>

Only one physician, Dr. Trevn, was charged with the medical care of the prisoners, but his visits were limited to two or three per year.<sup>[35]</sup> Prisoners died of pulmonary tuberculosis, diarrhea, dysentery, and other preventable diseases. Former prisoner Boby Duval held incommunicado for almost 9 months in 1977 counted 180 deaths during his detention.<sup>[36]</sup>

In 1977, under pressure from abroad to clean up his human rights record, Duvalier said in his new years speech that the protection of human rights must not violate the respect for sovereignty, much less serve as a springboard for political maneuvering.<sup>[37]</sup> Unfazed, US President Jimmy Carters administration began to pressure the government to clean up its record. Besieged by telegrams and messages from Haitians about human rights violations, including the condition of political prisoners.<sup>[38]</sup> United Nations Ambassador Andrew Young carried Carters message of respect for human rights to Haiti in August 1977. In a press conference, he advised that imprisoning political opponents and the use of brutality does not contribute to the growth and development of a country, but ultimately to its downfall.<sup>[39]</sup> He later in his visit met one-on-one with Duvalier and reiterated this message.

Young also arrived in Haiti with a list of 21 political prisoners.<sup>[40]</sup> According to Young, Duvalier promised he would investigate each case and find out if the person should come to trial immediately or be released.<sup>[41]</sup> Duvalier also agreed to invite an Inter-American Commission on Human Rights delegation to Haiti for a country visit and to limit detention without judicial hearing to the constitutionally permissible 48 hours.<sup>[42]</sup> The United States privately believed Duvalier [did] not intend to introduce any significant reforms or to refrain from using arrests or the threat of arrests to remove people he [viewed] as political threats.<sup>[43]</sup> US intelligence recounted that the IHaitian [sic] government [sic] will not oppose a visit by the Inter-American Commission on Human Rights because it feels that any violations of human rights or problems in that regard [sic] can be hidden.<sup>[44]</sup>

On September 21, 1977, Duvalier released 104 political prisoners and Haiti formally signed the American Convention on Human Rights.<sup>[45]</sup> In a speech the next day, he said that there remained no political prisoners in all of Haiti.<sup>[46]</sup> Duvalier also stated that he decided to release the prisoners on his own will, and that no one had asked him to do it.<sup>[47]</sup> The fate of missing persons, according to the US Embassy in Port-au-Prince, remained unclear.<sup>[48]</sup> Indeed, Amnesty International quickly questioned the fate of Haitian prisoners known still to be in detention, including Rochambeau Nestor, Ceres Daccueil, and Luc Deslours.<sup>[49]</sup>

After the 1977 prisoner release, the government announced that Fort Dimanche had been closed by order of Duvalier.<sup>[51]</sup> though the Inter-American Commission for Human Rights continued to receive denunciations that the Fort Dimanche had not closed.<sup>[52]</sup> Political prisoners continued to be held by the Duvalier government; however, the pattern of the detention in the later years of the Duvalier regime was more targeted to repressing the emerging free press and political opposition movement.

The harsh conditions of the triangle of death led many prisoners to die in prison. After their imprisonment and death, the whereabouts of these prisoners often remained unknown to their family members. For many families whose loved ones were not on the list of prisoners Duvalier released in September 1977, the announcement provided confirmation that they would not be found.

While many prisoners died from the conditions in Fort Dimanche or the other triangle of death facilities, others were summarily executed. Known executions include 11 prisoners at Fort Dimanche on August 7, 1974, and the seven persons killed on March 25, 1976.<sup>[53]</sup> Summary executions allegedly occurred even as Duvalier was publicly pledging the respect of human rights, with eight prisoners reportedly executed at Morne Christophe and Titanyen on September 21, 1977, the same day of the release of the 104 prisoners.<sup>[54]</sup>

Disappearance of political prisoners continued in the waning years of the government. For example, Human Rights Watch (then Americas Watch), interviewed family members of two persons Meres Briole and Joseph Pardorany disappeared after being arrested on September 9, 1983.<sup>[55]</sup> When Human Rights Watch confronted government officials at the Haitian National Commission for Human Rights about the disappearances, it was told that the two people never existed and that their identities were created by subversives.<sup>[56]</sup>

Political killings reached new levels in the final months of the government. The murder of four students by the army at a peaceful demonstration in Gonaives on November 28, 1985, outraged the population, setting in motion a movement to end the Duvalier government.<sup>[57]</sup> The killing sparked protests across the country and the government responded with force that brought international condemnation and prompted the United States to cut back its aid to Haiti.<sup>[58]</sup> On January 31, 1986, Duvalier declared a state of siege.<sup>[59]</sup> and unleashed his VSN paramilitary force (*Tontons Macoutes*) to terrorize the population.<sup>[60]</sup> According to Michael S. Hooper, perhaps the leading expert on human rights under Duvalier, the *Tontons Macoutes* killed hundreds of people in the final days of the Duvalier government.<sup>[61]</sup> Human Rights Watch documented at least six people shot and killed on February 5 and 6, 1986, by a *Tonton Macoute* in the Bel Air neighborhood of Port-au-Prince.<sup>[62]</sup> In these last days, fresh graves were found at a site near the village of Bon Repos.<sup>[63]</sup> where area residents told reporters that visited in early February 1986 that trucks had come to the site after street protests against the Duvalier government.<sup>[64]</sup>

Torture was a regular occurrence under Duvalier. In the transfer of detainees among triangle of death facilities, Casernes Dessalines, the army barracks located on the grounds of the presidential palace, often served as the first location of detention.<sup>[66]</sup> Many political prisoners faced interrogation and savage torture at the Casernes Dessalines before their transfer to Fort Dimanche.<sup>[67]</sup>

Some well-known cases include the torture of Sylvio Claude during his 1979 arrest, when security forces applied electric shocks to his feet.<sup>[69]</sup> and of Richard Brisson after the November 28, 1980 raids on activists.<sup>[70]</sup> Shortly after the raids, Lafontant Joseph, a lawyer and secretary general of the Ligue Haitienne des droits humains, the Haitian Human Rights League, was forcibly arrested and reportedly severely tortured.<sup>[71]</sup> In November 1981, several members of the Autonomous Federation of Haitian Workers (Central Autonome des Travailleurs Haitiens or CATH) and other workers demonstrating outside the Palais de Justice were also reportedly detained, taken to Casernes Dessalines, and tortured.<sup>[72]</sup>

Prisoners who had been tortured recounted a similar method of torture, called the *djak* in Haitian Creole: as already described, their hands were tied behind their legs, and a stick or bar was then pushed between their legs and arms.<sup>[73]</sup> The prisoners tied in this position would be drawn into a ball around the stick, and from that position, they would be beaten with sticks.<sup>[74]</sup>

Duvaliers government severely restricted freedoms of association, assembly, and expression through its complex network of military, paramilitary, and police forces, which worked to silence independent or opposition voices. The government repeatedly closed independent newspapers and radio stations. Journalists were beaten, jailed, and forced to leave the country. Despite promises of liberalization by Duvalier, the physical assault and arrest in December 1977 of Bob Nuree, editor of the opposition weekly *Jeune Presse*, made clear that any steps by the government towards liberalization had been cosmetic.<sup>[75]</sup>

By September 1979, newspapers reported that Duvalier terror gripped Haiti, and that Duvalier had unleashed the *Tontons Macoutes* as a warning to all.<sup>[76]</sup> In the first three weeks of September 1979, 200 people were reportedly arrested and the secret police had seized, beaten, and jailed leaders of two newly emerged political parties.<sup>[77]</sup> According to newspaper reports, the government also forbade the increasingly independent press and radio to report the arrests and any more complaints about killings and brutality of the *Macoutes* through the country.<sup>[78]</sup> Duvalier also reportedly called on his VSN paramilitary force to be ready to fight to defend his government.<sup>[79]</sup> In a September 22, 1979 speech commemorating the 22nd anniversary of the Duvalier regime, Duvalier stated that he would not tolerate subversive critique.<sup>[80]</sup> On the same day, he referred to the VSN as his first line of defense,<sup>[81]</sup> saying [m]en and women of the militia, you are the linchpin of my government, the major force on which I base myself.<sup>[82]</sup>

Prompted by concerns about Duvaliers new rhetoric, the Haitian Human Rights League held a meeting to discuss the status of human rights in Haiti on November 9, 1979.<sup>[83]</sup> In what became known as Black Friday, a unit of *Tontons Macoutes*,<sup>[84]</sup> carrying guns, knives, and iron bars<sup>[85]</sup> and shouting Jean-Claude Duvalier.<sup>[86]</sup> violently broke up the meeting, attacking some in attendance, including envoys from the United States, France, Canada, and West Germany.<sup>[87]</sup> United States political officer Ints Silins was slapped sharply across the face.<sup>[88]</sup> The head of the human rights league, Gerard Gourgue, and his wife and daughter were beaten and Georges Michel, a journalist for Radio Metropole, was hospitalized with head injuries.<sup>[89]</sup> A government communique regretted the incident, which it blamed on a fight between those present ... as a result of opinions issued in introductory remarks which were not shared by the audience, but denied any involvement in it.<sup>[90]</sup>

In the remaining years of the Duvalier government, the regime used increasing repression to contain the growing opposition and free press. In 1980, the press law was amended to provide for prison sentences of one to three years for members of the press engaged in offending the Chief of State or the First Lady of the Republic, or making any attack against the integrity of the peoples culture.<sup>[91]</sup> This law also required that journalists be licensed through the minister of the interior, and that all publications be submitted for censorship to the Interior Ministry 72 hours in advance.<sup>[92]</sup>

After the November 28, 1980 round-up, the repression of the press continued. In 1982, a newscaster for Radio Metropole was forced to discontinue his broadcasts and a group of journalists trying to produce a political newsletter was arrested, interrogated, and provided a warning that they should discontinue such attempts.<sup>[93]</sup> Minister of Interior Roger Lafontant issued a communique in 1984 to remind the press that they were required to obtain authorization to establish new publications and failure to observe the procedures provided for in the press law would result in a government ban of their publication.<sup>[94]</sup>

Despite these warnings, the press attempted to continue covering riots over food shortages that broke out in several cities in 1984.<sup>[95]</sup> but several journalists were rounded-up, arrested, interrogated, and in some cases tortured.<sup>[96]</sup> In one instance, police interrogated for 40 hours, beat, and broke the fingers of Pierre Robert Auguste, an editor of a local newspaper, in the presence of the minister of the interior and the chief of police.<sup>[97]</sup> At the end of 1984, approximately 35 intellectuals who spoke against the corruption of the government were rounded up and imprisoned, held without charge, and finally released in April 1985.<sup>[98]</sup> The conditions of imprisonment were little improved from the period of time when scores of prisoners died in Fort Dimanche. One imprisoned doctor was beaten to the point of loss of consciousness for trying to treat a fellow prisoner with a gastrointestinal illness.<sup>[99]</sup>

The events of November 28, 1980, when security forces arrested hundreds of journalists and opposition voicestorturing several of them illustrate Duvaliers personal role in crimes committed by his government.

A period of liberalization under Duvalier had allowed for the development of independent journalism, a few opposition parties, and a human rights league.<sup>[100]</sup> but signs of a coming repression began to gather in early fall 1980, with the October 13th arrest of Sylvio Claude, head of the Christian Democratic Party.<sup>[101]</sup> and of Anthony Kompe-Filo Pascal, a journalist with Radio Haiti Inter, and the subsequent arrest of Ivens Paul, playwright and station announcer for Radio Cacique on October 16, 1980.<sup>[102]</sup>

The election of Ronald Reagan as president of the United States in November 1980 changed the political calculation for Duvalier. The night of Reagans election, gunshots from the celebrating *Tontons Macoutes* could be heard across Port-au-Prince.<sup>[103]</sup> and the Duvaliers threw a lavish gala to celebrate Jimmy Carters defeat.<sup>[104]</sup> A US official claimed that Haitians felt free to act when Carter lost.<sup>[105]</sup>

On November 28, 1980, Haiti inaugurated the most widespread campaign to repress dissent since the days of Papa Doc, Francois Duvalier, almost a decade [before].<sup>[106]</sup> The day began with the disappearance of several journalists at Radio Haiti Inter. Richard Brisson, the program manager at Radio Haiti Inter did not show up to work and station manager Jean Dominique had not returned from running an errand.<sup>[107]</sup> Radio Haiti Inter began to broadcast the disappearances, asking for information about the whereabouts of Brisson and Dominique.<sup>[108]</sup> In early afternoon, suddenly the airwaves at Haiti Radio Inter were filled with commotion, as plainclothes officers raided the station. A recording played over and over again for 30 minutes, and then the broadcast went silent.<sup>[109]</sup> The only sound that could be heard emanating from the station was the methodic click of a skipping record player, as security forces took everyone in the station into several vans that transported them to Casernes Dessalines, on the grounds of the presidential palace.<sup>[110]</sup> By the end of the day, between 100 and 400 human rights defenders, opposition political members, and journalists had been arrested throughout Port-au-Prince.<sup>[111]</sup> In one sweep, the democratic movement in Haiti was crushed.<sup>[112]</sup>

The conditions of detention were harsh. Stripped of their clothing, detainees secretly communicated with each from their small cells, trying to piece together information about what was occurring.<sup>[113]</sup> One by one, the detainees were called in for questioning by Chief of Police Colonel Jean Valm, Major Emmanuel Orel, and Colonel Albert Pierre, widely known as Ti Boul, with Valm conducting the questioning.<sup>[114]</sup> As they waited their turn, they could hear the screams of other detainees being tortured.<sup>[115]</sup> The detainees were held incommunicado without access to legal counsel or to their families.<sup>[116]</sup>

An editorial by the Ministry of Information ran the next morning in the *Nouveau Monde*; entitled The plot will not succeed, it was a warning to troublemakers that the interests of the nation will prevail.<sup>[117]</sup> On November

30, Colonel Jean Valm issued a statement about the arrests in which he announced the dismantling of a vast communist plot:

In an interview years after the events, Valm reportedly asserted that Duvalier told him to do what you want with these journalists [\[119\]](#) Valm did not fully understand the order, and sought clarification from Henri Bayard, Minister of the Presidency. [\[120\]](#) Bayard reportedly told him to "do [his] job and [a]rrest them. [\[121\]](#) He also told Valm not to worry, if they did nothing, the president would release them the following Monday.

On December 4, the pro-government newspaper *Le Nouveau Monde* ran a headline celebrating the arrests; [\[121\]](#) they failed in their criminal attempt, the revolution continues its triumphal march. [\[122\]](#) Under this headline an official bulletin was published announcing the dismantling of a network of communist agitators. [\[123\]](#) and another editorial by Duvaliers information ministry warning youth about the trap of subversive ideas. The editorial refers to the revolutions disarmament of conspiratorial and reactionary groups and cautions that those of mature age must be vigilant and protect youth from being manipulated by ideologues. It is for this reason, the editorial claimed, that the government must censure the behavior of those who unpatriotically lead youth away from their vocation as citizens. [\[124\]](#) The same front page reproduced a communiqué from the secretary of state for social affairs inviting citizens to a rally to support Duvalier on December 4, 1980. [\[125\]](#)

At the rally on December 4, Duvalier vigorously defended his actions, saying that there were Haitians who had forgotten all that he had done to liberalize the country. [\[126\]](#) He warned activists that, they must respect [\[his\]](#) power, as my power will respect them. [\[127\]](#) Alluding to the arrests, he said that he did not lose his cool, but that it was a moment in which one had to act. [\[128\]](#)

In an interview published on December 8, Duvalier told the *New York Times* that the arrests were necessary for the security of the government, stating we were obliged to act for the simple reason most of these people were implicated in a conspiracy against the security of the Government. Politics is not a matter for children, [\[s\]](#)ometimes you have to act even if it is against your feelings. [\[129\]](#) In an interview with a Haitian paper the next day, Duvalier reiterated that the government did not act lightly (*na pas agi la lgre*) in imprisoning and expelling the dissidents. [\[130\]](#)

By January 1981, 17 of the journalists that had been arrested were forcibly exiled, and 26 more were charged with acts of terrorism. [\[131\]](#) Several of those arrested had suffered severe beatings and torture, including journalist Richard Brisson and Lafontant Joseph, a human rights activist. [\[132\]](#) An unnamed journalist was so badly beaten around the head, with his hands tied behind his legs, that upon his return to his cell, he was semi-conscious and unable to stand. [\[133\]](#)

Testimonial evidence from female victims of Duvalier should be collected to determine whether violations also included sexual violence. The *Tontons Macoutes* under Duvalier-pre were widely believed to use sexual violence against women as a means to humiliate women and their husbands into submission to the regime, without facing punishment. In some instances in that earlier period, parents would not allow their daughters to go to public areas where *Macoutes* were known to be, because if a *Macoute* decided he wanted a girl, he would have her. [\[135\]](#)

There is anecdotal evidence that politically motivated sexual crimes continued under Jean-Claude Duvalier. In 1981, Amnesty International reported that one female refugee living in France claimed that she had been detained after refusing to have sexual relations with a *Tonton Macoute*. [\[136\]](#) And what we know of Duvalier government treatment of female political prisoners should give pause. Female prisoners held in the Casernes Dessalines, for example, recount that they were forced to walk in only their panties to the washroom, walking through the barracks exposed. [\[137\]](#) While male prisoners were also forced to walk in their underwear, the nakedness of female prisoners in front of all-male military police guards and majority-male prisoners was a form of sexual humiliation.

The issue merits further investigation because, while there is little documentation of Duvalier-era sexual crimes at present, it was not standard practice at the time for human rights organizations or even journalists to report on sexual violence as a human rights violation. [\[138\]](#)

Shortly after Duvalier fled the country in 1986, the new government established a commission to investigate the financial corruption of the Duvalier government and later instituted criminal proceedings against Duvalier for financial crimes. In 2008, another investigation was opened and included crimes against persons. The government re-instituted these pending cases when Duvalier returned in January 2011. Under Haitian law and procedural rules, the government has until May 19, 2011, to complete its investigation and charge Duvalier.

The 1986 proceedings began on April 18, 1986, when the state prosecutor (Commissaire du gouvernement), Ulrick Rosarion, issued instructions for the investigation of members of the Duvalier government, referred to as the Duvalier criminal organization. Investigating judge (juge d'instruction) Emmanuel Dutreuil was assigned to the case. The same year, cases were instituted against several of the members of his government, including Luc Desir, an official in Duvaliers government who also served as chief of the secret police under Duvalier-pre, for crimes including murder and torture. On January 15, 1987, the governor of the Bank of the Republic of Haiti issued a report concluding that sufficient evidence existed that Duvalier alone stole over \$120,000,000 from the public coffers of Haiti and that members of his family and government stole hundreds of millions of dollars more.

On June 9, 1999, a supplemental instruction enumerating the allegations in the original 1986 instruction was sent to a new investigating judge on the case, Pierre Josiard Agnant, who brought charges against Duvalier and Frantz Merceron for bribery and corruption, Duvaliers wife Michèle Duvalier for corruption and as an accomplice to bribery, and several other named defendants for corruption. [\[139\]](#) On April 29, 2008, another investigation against Duvalier was opened by the state prosecutor (Commissaire du gouvernement), Claudy Gassant; it included the allegations of financial crimes and added crimes against persons, including potential crimes against humanity. This case was referred to investigating judge (juge d'instruction) Bernard Saint Vil, and was open when Duvalier returned to Haiti after his 25-year exile.

Commissaire du gouvernement Harycidias Auguste re-instituted this pending criminal case when Duvalier returned in January 2011. Saint Vil was no longer available to handle the case, and it was referred to investigating judge Carves Jean on January 19, 2011, with instructions to investigate both alleged financial crimes and crimes against persons, including murder, torture, arbitrary detention, and disappearances. On January 19, 2011, Duvalier submitted to questioning on corruption and embezzlement allegedly committed during his 15-year rule. In addition, several victims of the Duvalier government came forward and filed complaints with the government. Their complaints formed the basis of further instructions by the commissaire to investigate Duvalier for human rights violations, including crimes against humanity. As of March 28, 2011, 16 Haitian victims of Duvalier had filed complaints with the state prosecutor related to crimes against humanity and human rights violations, including extrajudicial killings, torture, and enforced disappearances. [\[140\]](#)

The procedural clock for the investigation began on January 19, 2011, giving the investigating judge three months to determine whether charges should be brought against Duvalier. The investigating judge may request an additional month, though these time limits are rarely adhered to in practice. During this time, the judge may call in witnesses and carry out other investigative acts. As of March 19, 2011, a number of victims had been brought before the judge for questioning, as well as two former finance ministers. At the end of the investigative period, the investigating judge will issue a notification to the commissaire (Soit communiqué), alerting him that the investigation is complete. The commissaire may then provide the judge with a final resubmission (Requisitoire définitif) on the charges. The judge will consider the evidence and will ultimately decide if charges will be brought.

Human Rights Watch is not aware of any evidence that Duvalier was present when the murders, torture, disappearances, or arbitrary detentions took place. However, under international and Haitian law, senior leaders can be prosecuted for the acts of their subordinates in a number of ways.

A senior leader may be responsible if prosecutors can prove a causal link between his orders and crimes against civilians committed by his troops. Liability can also arise if a leader instigated, aided, or abetted the commission of crimes.

Under Haitian criminal law, [\[141\]](#) a person can be tried and punished as an accomplice when three conditions exist: first, a principal act, *i.e.*, a predicate crime; second, an act of complicity before or concomitant with the commission of the predicate crime; and, third, *mens rea*, or knowing participation in the criminal activity. The code distinguishes between three types of complicity. The first is complicity by instigation and can take the form of direct provocation through instructions, promises, threats, and the like; the second type is by procuring the means for the crime; and, the third, aiding and abetting.

The International Criminal Tribunal for Rwanda (ICTR) has found that assistance or encouragement alone may be sufficient to establish individual responsibility. [\[142\]](#) The ICTR also found that aiding and abetting are distinct juridical concepts. [\[143\]](#) It has also held that the presence of the accomplice at the crime is not required. [\[144\]](#) In addition, the act of aiding or abetting can occur through failure to act if the omission has a decisive effect on the perpetration of the crime or is accompanied by the requisite intent or *mens rea*. [\[145\]](#) The accomplice does not, however, need to share the same intent or *mens rea* as the primary author of the crime; rather, the intent requirement will be satisfied where an individual acts intentionally and with the awareness that he is influencing or assisting the principal perpetrator to commit the crime. [\[146\]](#) In addition, the *mens rea* can be established circumstantially, including with evidence of prior like behavior, failure to punish, or verbal encouragement. [\[147\]](#)

When Duvalier came to power, Haiti's constitution named the president the supreme chief and leader of the Armed Forces and VSN, and granted the president all power to command them. [\[148\]](#) The 1983 constitution confirmed this power. [\[149\]](#) Many of the acts of torture and arbitrary attention occurred on the very grounds of the Presidential Palace, in the Casernes Dessalines.

Duvaliers public speeches and acts have alluded to his control over the state apparatuses perpetuating these crimes. In a speech on June 22, 1971 in front of Fort Dimanche, he said that he was "the supreme and de facto Leader of the Armed Forces, Police Forces and the National Security Volunteers [*Tontons Macoutes*]," and that he was "now the only Supervisor of the Militia." He also warned that "people who openly or stealthily try to block the path of our Revolution will be systematically carried and swept away by this great force of history." [\[150\]](#) At the September 21, 1977 release of 104 prisoners, Duvalier stated that the release of prisoners was his decision to make. [\[151\]](#) In December 1980, after the round-up and torture of journalists and political opposition, Duvalier said baldly we were obliged to act. In that case, his police chief reportedly said that Duvalier told him to do what you want with these journalists. [\[152\]](#) Duvalier is alleged to have ordered the detention of businessman Lucien Rigaud in the National Penitentiary. [\[153\]](#)

In addition to public speeches and acts of Duvalier, evidence of insiders, those who worked in Duvaliers system, will be critical to detail Duvaliers exact role. Important insiders who are alive today include Colonel Jean Valm, director of the secret police and chief of the Port-au-Prince police, and Emmanuel Orcel. Both have been identified in human rights reports and by victims as perpetrators of torture and arbitrary arrests.

Duvalier may also be liable under the customary international law doctrine of command responsibility or superior responsibility which holds that individuals who are in civilian or military authority may under certain circumstances be criminally liable not solely for their own actions but also for the crimes of those under their authority. [\[155\]](#) This principle of liability was applied by Haitian courts in the prosecution of the April 1994 Raboteau massacre [\[156\]](#) and resulted in the conviction of a number of superiors including Raoul Cdras, the leader of the 1991-1994 military junta and Emmanuel Toto Constant, the founder of the paramilitary organization the Front for the Advancement and Progress of Haiti. [\[157\]](#)

Three elements are needed to establish liability for criminal acts pursuant to the doctrine of command or superior responsibility:

In the Raboteau case, the court found that these elements resulted in a crime by omission. [\[159\]](#)

A superior-subordinate relationship is clearest when there are formal rules, for example when legislation or a military chain of command specifies the existence of a relationship. However, even in the absence of formal rules, a superior can have actual and effective control. [\[160\]](#) Thus, civilian and political superiors, as well as those in military command, may be held liable under this doctrine. [\[161\]](#)

As president, Duvalier exerted *de jure* and *de facto* command and control over the army, police, and other irregular security forces. [\[162\]](#) which committed arbitrary arrests, torture, disappearances, and executions. These groups reported directly to Duvalier. [\[163\]](#) The state-run prison Fort Dimanchewhere prisoners died from torture was run by the army. [\[164\]](#)

A superiors knowledge can be proven either by showing he had actual knowledge that his subordinates were committing or about to commit crimes or that he had reason to know that his subordinates were about to commit or had committed crimes. [\[165\]](#)

While the fact that a superior had actual knowledge may be proven through direct evidence, it may and often is also established through circumstantial evidence, *i.e.*, evidence from which an inference can be made that the superior must have known of subordinates criminal acts. [\[166\]](#) Such evidence can include the number, type, and scope of illegal acts, time during which the illegal acts occurred, whether the occurrence of the acts is widespread, the *modus operandi* of similar illegal acts, and the officers and staff involved. [\[167\]](#) International tribunals have also found that a superiors knowledge may be presumed if a superior had means to obtain information of a crime and deliberately refrained from doing so. [\[168\]](#)

The had reason to know standard does not require that the superior had actual knowledge but requires only that he had some information available to him that would have put him on notice of crimes [\[169\]](#) General information about the possibility of crimes is all that is necessary, not that he have explicit or specific details of them [\[170\]](#) and that information could be available in many different forms, such as through a specific report or other written format, or even orally. [\[171\]](#) The key question is whether the superior is in possession of the information, not whether he acquainted himself with it [\[172\]](#) because a superior may not remain willfully blind to the acts of subordinates. [\[173\]](#)

As described above, the crimes under Duvaliers rule were sufficiently notorious that he must have known about them. And if not, he was personally put on notice repeatedly by, among others:



Various public releases of prisoners that Duvalier personally oversaw indicate that he had full knowledge of the imprisonment of political dissenters. He was also put on notice by international actors about his human rights record. For example, in 1974, a United States Senate subcommittee charged that the government of Haiti continued the practice of Duvalier pre and held political prisoners and engaged in political repression.<sup>[178]</sup> When US Senator Edward W. Brooke met with Duvalier in April 1974, Duvalier attempted to rebut allegations in the report, which he had read.<sup>[179]</sup> Duvalier claimed that Haiti, unlike other Latin American countries, had no political prisoners.<sup>[180]</sup> In direct contradiction of this, in September 1974, about a dozen of Haiti's most prominent political prisoners, after being held for two years without trial, [were] sentenced to life imprisonment by a secret military court. . . .<sup>[181]</sup> Over the next few years, Duvalier pardoned over 100 political prisoners.<sup>[182]</sup> again contradicting his assertions. Although Duvalier issued public amnesties in the succeeding years,<sup>[183]</sup> the Inter-American Commission on Human Rights was able to send the government a note on September 11, 1978, with a list of 151 individuals who, according to the allegations of accusers, were executed while in prison or who died in prison between 1974 and 1977 because of lack of medical care.<sup>[184]</sup>

Superiors have both a duty to prevent and a duty to punish the crimes of subordinate persons. These constitute distinct and independent legal obligations, but they are not alternative obligations, i.e., a superior who has reason to know of a crime to be committed cannot wait until the crime is committed and then impose punishment.<sup>[185]</sup>

Superiors successfully discharge their duty to prevent subordinate crimes when they employ all means materially available to them to do so.<sup>[186]</sup>

A superior's duty to punish arises after the commission of an offense, and includes at least an obligation to investigate possible crimes, to establish the facts, and to take steps to ensure that the perpetrators are sanctioned.<sup>[187]</sup> Both the criminal crimes tribunals for Rwanda and the former Yugoslavia have held that evidence of failure to punish may arise from failure to create or sustain an environment of discipline and respect for the law.<sup>[188]</sup>

Human Rights Watch knows of no evidence that Duvalier took steps to prevent or stem any of the crimes described in this report or that any of their direct perpetrators were punished.

Duvaliers alleged crimes, including murder, torture, and sequestration, are serious crimes under Haitian law. These crimes were committed as part of a state apparatus under Duvaliers command. Under international law, which is binding on Haiti and has been incorporated into Haitian law, Haiti has a duty to investigate and punish perpetrators of serious human rights abuses, a duty which cannot be undermined by statutes of limitations, amnesties, or other domestic legal obstacles. In addition, crimes committed as part of systematic or generalized attacks against civilian populations constitute crimes against humanity.<sup>[189]</sup>

Article 466 of the Haitian penal code provides a 10-year limitations period from the date of the commission of the crime for the prosecution for most of Duvaliers alleged crimes. After the fall of the Duvalier government, a decree was adopted on June 18, 1986, to extend the statute of limitations for crimes against persons (including homicide, murder, rape, false arrest, and illegal imprisonment) committed under the 25-year Duvalier regime (from October 22, 1957 to February 7, 1986) to 10-years from the date of the decree, thus allowing for investigation and prosecution of all Duvalier-era crimes (Duvalier-pere as well as Jean-Claude Duvalier) through June 18, 1996.<sup>[190]</sup> Duvaliers lawyers and former Minister of Justice Bernard Gousse argue that this decree prevents the current investigation and prosecution of Duvalier since that date is now past. <sup>[191]</sup> This interpretation fails to consider Haiti's international human rights obligations and to consider the jurisprudence that defines some of the alleged crimes, namely disappearances, to be continuing crimes, and therefore, the statute does not run until the crime is completed (i.e. the victim's whereabouts determined).

Article 276 (2) of the Haitian Constitution states:

Thus, duly ratified international treaties trump any conflicting laws. Haiti is a party to at least two human rights treaties, the American Convention on Human Rights and the International Covenant on Civil and Political Rights, which impose obligations on party states to investigate and punish perpetrators of serious human rights abuses.

Haiti became a party to the American Convention on Human Rights in 1977. The Inter-American Court of Human Rights, whose interpretations of the convention are authoritative and binding on Haiti, has held repeatedly that in light of states obligations to investigate and prosecute crimes under the convention, statutes of limitations are inadmissible in connection with gross human rights violations proscribed by international law. The court has ruled that all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible under the convention, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extra-legal, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.<sup>[193]</sup> Thus, as the crimes allegedly committed by Duvalier constitute serious violations of human rights, they cannot be prescribed by domestic law.

Moreover, since 1946, various international instruments have reaffirmed that those responsible for crimes against humanity must be punished and that states should not enact legislative or other measures, such as statutes of limitations, to prevent fulfillment of the international obligation to prosecute persons alleged to have committed crimes against humanity.

Indeed, the Convention on the Non-Applicability of Statutory Limitations on War Crimes and Crimes Against Humanity (1970) was adopted just prior to Jean-Claude Duvalier assuming power, and the European Convention on the Non-Applicability of Statutory Limitations on War Crimes and Crimes Against Humanity (1974) was adopted shortly thereafter. Both treaties set out the principle that there is no time limit to prosecute crimes against humanity, a principle that is codified in Article 29 of the Rome Statute of the International Criminal Court.

While Haiti has not ratified any international treaty on statutory limitations, these instruments are evidence of state practice and *opinio juris* that statutes of limitations should not be interpreted to bar prosecution of crimes against humanity. The Inter-American Court of Human Rights, a body by whose judgments Haiti is legally bound, has also affirmed that crimes against humanity are not susceptible to application of statutes of limitation.<sup>[194]</sup> In that case the court held that a murder carried out in 1973 should be subject to prosecution notwithstanding that Chile only became a party to the Court in 1990, on the grounds that in 1973 murder committed in the course of a generalized or systematic attack against certain sectors of the civil population was a crime against humanity and therefore in violation of a binding rule of international law at the time. As the prohibition to commit crimes against humanity is a *jus cogens* rule, the punishment of such crimes is obligatory pursuant to the general principles of international law and statutes of limitations are not applicable.

As described above, many people taken away by Duvaliers forces were never heard from again. The United Nations Working Group on Enforced or Involuntary Disappearances has recorded a number of cases dating from the 1981-1985 period: in none of the cases have officials acknowledged the detainees wrongful deprivation of liberty let alone disclosed their fate or whereabouts. According to the working group, most of the cases that occurred during the [1981-1985] period concerned members or supporters of the Haitian Christian Democrat Party who were allegedly arrested by members of the Armed Forces or by the *Tontons Macoutes*.<sup>[195]</sup>

Under both French law and which Haitian law is based and international law, the statute of limitations for such acts does not begin to run until the crime has finished, i.e., until the detained person is released or his whereabouts are clarified.

Haitian law, like French law, punishes the crime of *sequestration*,<sup>[196]</sup> which may be translated as false imprisonment. The French Cour de cassation (Supreme Court) has consistently held that *sequestration* is a continuing crime.<sup>[197]</sup> For such a crime, the statute of limitations only begins when all the elements of the crime have been completed; i.e., the victim has been released or his fate clarified.<sup>[198]</sup> In the cases filed in France on behalf of disappeared French victims of Chiles Augusto Pinochet, the trial judge ruled that the statute of limitations could not run as long as the victims whereabouts were unknown.<sup>[199]</sup> Even in the case of murder, the statute of limitations only begins when the date and the cause of the victims death are known.<sup>[200]</sup>

Similarly, international law criminalizes enforced disappearances, defined as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.<sup>[201]</sup> The UN Declaration on the Protection of all Persons from Enforced Disappearance states that Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.<sup>[202]</sup>

The United Nations Working Group on Enforced or Involuntary Disappearances, in a recent General Comment, noted that [e]nforced disappearances are prototypical continuous acts. The act begins at the time of the abduction and extends for the whole period of time that the crime is not complete, that is to say until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual. As a result, said the working group:

The declaration also provides that All States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control.<sup>[204]</sup>

The Inter-American Court of Human Rights has also recognized the permanent and continuous nature of forced disappearances. Since its judgment in the *Velsquez Rodriguez* case in 1988, the court has consistently reiterated that [t]he forced disappearance of human beings is a multiple and continuous violation of many rights under the convention that the States Parties are obligated to respect.<sup>[205]</sup> A similar understanding of the nature of forced disappearances is reflected in national case law in the Americas: courts in Argentina, Bolivia, Mexico, Peru, Uruguay and Venezuela have treated forced disappearances as continuous offences and crimes against humanity.<sup>[206]</sup> The Supreme Court of Mexico ruled, for instance, that the statute of limitations should be calculated only from the time the victims remains are found.<sup>[207]</sup> In Chilean cases involving General Augusto Pinochet, the Supreme Court and the Court of Appeal of Santiago established the non-applicability of statutes of limitations.<sup>[208]</sup>

Thus, because of the continuous nature of the crime, the allegations against Duvalier for disappearances are not prescribed by any domestic Haitian law, including the 1986 decree.

As described above, international law requires that Haiti investigate and prosecute Duvaliers crimes. The investigation and trial of a former head of state for mass crimes committed between 25 and 40 years ago will be a complex endeavor. Further complicating the issue are the challenges currently facing the Haitian judicial system. The infrastructure, already weak, was further weakened by the January 2010 earthquake. Few judicial resources exist to dedicate to this case. The Haitian judiciary and bar have little experience or expertise in prosecutions of this nature. And all actors in the case, including witnesses, victims, judicial officers, and the defendant, face possible harassment and in some cases possible physical violence that require attention from Haitian authorities.

The Haitian legal system will have difficulty pursuing the case without international support. Even before the earthquake, the Haitian judicial system struggled to handle basic criminal cases, let alone complex trials involving a former head of state. According to a pre-earthquake UN report,

Arbitrary arrests, unlawful police custody, ill-treatment and excessive use of force continue to be reported. Lack of technical expertise, poor communication, negligence and apparent corruption of judicial authorities are reportedly the source of numerous unlawful arrests, prolonged pre-trial detention and a low number of court decisions. Public distrust of the justice system has led many Haitians to avoid the formal court system and rely on informal methods, such as vigilantism, which further undermines the security situation.<sup>[209]</sup>

Haiti's earthquake has further diminished the capacity of the state and has almost totally undermined its ability to safeguard fundamental rights. Chronic problems such as violence against women and inhuman prison conditions have been exacerbated. Most of those who escaped from jail during the earthquake (almost none of whom had ever been tried) remain at large.<sup>[210]</sup> The failures of reconstruction and confused elections have further eroded government legitimacy.

Special Advisor to the President of Haiti for Legal Affairs Ren Magloire stated clearly: the Haitian judicial system and I think that this is no secret is very weak. <sup>[211]</sup>

Nevertheless, with concerted international efforts, a prosecution of Duvalier in Haiti could kick-start rule of law efforts and help to begin building the state institutions that Haitians deserve. Trying these complex cases demands special expertise in investigating mass violations, understanding the criminal network that led to their commission, and building the links between Duvalier and other senior officials and those officers or agents who committed crimes on the ground. It requires among other things, protecting prosecution and defence witnesses, and providing adequate security for those involved in proceedings. Enhancing national capacity to address the most serious crimes under international criminal law thus has the potential to significantly advance broader judicial reform efforts and both merits and requires targeted funding and assistance from international donors.

Resources must also be available to ensure Duvaliers right to a fair trial. The Haitian constitution enshrines basic due process rights, including the right to a fair trial, as does the American Convention on Human Rights and the International Covenant on Civil and Political Rights (ICCPR). Under Article 14 of the ICCPR, Duvalier has a number of fair trial rights, including the right to be presumed innocent until proven guilty; the right to be informed promptly and in detail of the nature and cause of the charges against him; the right to adequate time and facilities to prepare his defense and communicate with a lawyer of his choosing; the right to be tried without undue delay; and the right not to be compelled to testify against himself or to confess guilt. Any trial of Duvalier should ensure that these rights are scrupulously protected.

An investigation and prosecution of this kind requires significant human resources. Currently, only one *juge d'instruction* and one prosecutor are assigned to the case. The government should consider assigning additional personnel to the Duvalier dossier. Under Haitian law it is not unprecedented to have more than one investigative judge assigned to a case.

The governments limited resources can be maximized to develop a targeted and efficient prosecution strategy. Though his alleged crimes may be extensive and varied, the government should not attempt to prosecute

Duvalier for all of the alleged crimes of his regime. A better strategy for the prosecution of Duvalier would be to focus on charges that are representative of Duvaliers alleged gravest crimes for which there exists a strong evidentiary basis.<sup>[212]</sup>

The prosecution should also ensure that its strategy includes adequate focus on evidence about the chain of command. It will be vitally important to balance testimony from victims and witnesses to establish what crimes took place with sufficient with evidence to establish Duvaliers control over the official and unofficial security forces that committed such serious crimes as well as his knowledge of the crimes.<sup>[213]</sup>

Mass human rights violations presume a criminal network that facilitates the widespread commission of crimes, in Duvaliers case a network of official and unofficial security forces. Uncovering this criminal network to pursue the links between Duvalier and his forces on the ground will require significant effort and expertise. While there are many skilled jurists in Haiti, they do not have the experience, and thus, at present, the expertise to pursue this type of investigation and prosecution. Special Advisor to the President of Haiti on Legal Affairs Ren Magloire noted that [t]his is the first time a case on crimes against humanity will be before the Haitian courts.<sup>[214]</sup>

On February 1, 2011, United Nations High Commissioner for Human Rights Navi Pillay offered the authorities in Haiti technical assistance towards the prosecution of crimes committed under the leadership of Jean Claude Duvalier. According to Pillay:

The High Commissioners statement is a welcome development. Overall, international experts with knowledge of how to handle complex criminal investigations, prosecutions, and trials can help build the capacity of their national counterparts and promote procedures that provide guarantees of a fair trial. International staff can also help to buffer proceedings from political interference and foster judicial independence, particularly in sensitive cases such as Duvaliers. In addition to the expertise provided by the OHCHR, international donors can provide vital support to the Haitian authorities including through ongoing judicial reform efforts in a number of ways. For instance, donors could consider funding international experts to provide behind the scenes assistance to prosecutors, judges, and defense attorneys. It could also involve funding or seconding a temporary complement of international staff to work alongside Haitian staff, which also would alleviate some of the human resource constraints identified above.

Technical assistance is important but it will be of little consequence unless Haitian authorities are committed to vigorously pursuing the evidence and trying Duvalier and potentially others fairly and effectively. Unfortunately, the two presidential candidates in the March 20, 2011 runoff have not yet demonstrated the requisite political will. (The election results from the March 20, 2011, were not available at this writing.) Mirlande Manigat has indicated that the prosecution of Duvalier is not [her] business.<sup>[216]</sup> Michel Martelly has welcomed Duvaliers return and indicated he would be happy to have Duvalier as an advisor.<sup>[217]</sup> Such positions are inconsistent with Haitis international law obligations, as outlined above.

Even under the administration of President Ren Prval, which has supported the prosecution, the government has not yet done enough to create a safe environment for the investigation and prosecution of Duvalier. Several victims have expressed concerns for their safety. A group of victims sent a public letter to President Prval and several ministers calling on the government to detain Duvalier during the pendency of the proceedings.<sup>[218]</sup> These victims protest that Duvalier is free to travel the country and give speeches, in the company of known *macoutes*, and to reactivate his network of henchmen, while victims face intimidation and are afforded no protection.<sup>[219]</sup> The juge d'instruction issued an order assigning Duvalier to his home, a form of house arrest, on March 24, 2011, while he was in a hospital.<sup>[220]</sup>

Several people in direct contact with victims and witnesses told Human Rights Watch that, in fact, some victims and witnesses would not come forward in the current environment, particularly given the likelihood that a new government less supportive of the case than the current administration may soon take power. To address these concerns, effective witness protection and adequate security for prosecutors, court staff, and defense attorneys must be in place for procedures to be effective and fair.

International donors have a role to play in supporting witness protection and security programs as well as in supporting those in Haiti committed to the prosecution. Public statements by donors and high-level foreign officials recognizing the importance of the case and noting Haitis obligations to pursue justice are essential. While UN High Commissioner Pillay and UN Secretary General Ban Ki Moon<sup>[221]</sup> have strongly backed the need to prosecute Duvalier-era crimes, other key international actors have not made the same demonstration of support. P.J. Crowley, then spokesperson for the United States Department of State, stated that what happens to Duvalier is a matter for the Government of Haiti and the people of Haiti.<sup>[222]</sup> This is of course is true, but Haiti also has international legal obligations and will require strong international support to discharge those obligations and to help foster a domestic climate that favors prosecution. The safety and security of witnesses, victims, and judicial officers could be enhanced if the international community demonstrated its commitment to the case and admonished any intimidation or threats designed to prevent the prosecution from continuing.

The prosecution of Duvalier comes at one of the most difficult periods in Haitis already difficult history. In just over a years time, Haiti has faced innumerable challenges, with the destruction caused by the earthquake of January 12, 2010, a subsequent slow recovery, Hurricane Tomas, a cholera epidemic, and contested first-round presidential elections. Despite the obstacles, we believe the prosecution of Duvalier should be a priority, providing an opportunity for Haiti to break with the impunity of the past.

A Haitian proverb states that a constitution is made of paper, but bayonets are made with steel.<sup>[225]</sup> This has been the legacy of most governments of Haiti, not only of Jean-Claude Duvaliers. Though it was one of the first colonies to win independence, Haitis path towards establishing the rule of law has been tortuous. Throughout Haitian history, repressive rulers and their henchmen have bled the country and its citizens dry.<sup>[226]</sup> The law has been used to reinforce the domination of a tiny elite over the great mass of poor peasants and workers and has almost never functioned to punish even the worst massacres.<sup>[227]</sup> As a result, the Haitian poor justifiably have little faith in the Haitian state in general, and the legal system in particular.<sup>[228]</sup>

A fair and transparent prosecution of Duvalier in Haiti in which victims are able to tell their stories and participate as parties civiles<sup>[229]</sup> for one of the first times in history.<sup>[230]</sup> and in which Duvaliers lawyers present a vigorous defense could help to build Haitians confidence in the justice system. It could also provide a civics lesson about a particularly dark period of Haitian history which most Haitians today are too young to remember. In confronting its history head-on, Haiti has the opportunity to end the cycle of impunity that has left the majority of its citizens outside the protection of the law.

This report was written by Amanda M. Klasing, fellow in the Womens Rights Division of Human Rights Watch and Reed Brody, counsel and spokesperson in Brussels for Human Rights Watch, based on archival research and research in Haiti in February and March 2011. Fred Abrahams, special advisor in the Program Office, contributed additional archival research. The report was edited by Daniel Wilkinson, Americas deputy director; Param-Preet Singh, senior counsel, International Justice Program; Aisling Reidy, senior legal advisor; and Joe Saunders, deputy program director. Americas Division associates Laura Graham and Guillermo Farias contributed to production of the report. Primum Africa Consulting (Senegal) translated this report into French. The law firm of Mayer, Brown LLP (Paris) edited the translation together with Human Rights Watch interns Diane Douzill and Alvine Temfack. Dany Khayat and Jos Caicedo of Mayer, Brown LLP and Beatrice Bartoli of the Paris Bar assisted with legal analysis.

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Human Rights Watch takes full responsibility for any errors or omissions in this report.

<sup>[1]</sup> Human Rights Watch interview with Jean [last name withheld], Port-au-Prince, Haiti, March 17, 2011.

<sup>[2]</sup> Telegram from the US Embassy in Haiti to the Department of State, Perspectives on U.S. policy Toward Haiti, August 14, 1972, declassified September 4, 2008, para. 2.

<sup>[3]</sup> Telegram from US Embassy in Haiti to US Secretary of State, First Ninety Days of the New Duvalierism, July 1971, declassified September 4, 2008, para. 2.

<sup>[4]</sup> Telegram from US Embassy in Haiti to US Secretary of State, Meeting with President Duvalier, May 1972, declassified September 4, 2008, para. 3.

<sup>[5]</sup> Telegram from US Embassy in Haiti to US Secretary of State, First Ninety Days of the New Duvalierism, para. 10.

<sup>[6]</sup> See, e.g., the 151 alleged deaths in Fort Dimanche between 1974-1977, in Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Haiti, December 13, 1979, <http://www.cidh.oas.org/countryrep/Haiti79eng/toc.htm> (accessed February 2, 2011), ch. 4.

<sup>[7]</sup> See Constitution of the Republic of Haiti, 1964, arts.188-92; see also Factors Affecting U.S. Diplomatic and Assistance Relations with Haiti, Report Submitted by Senator Edward W. Brooke to the US Congress, Senate Committee on Appropriations, November 1977, p. 35.

<sup>[8]</sup> Factors Affecting U.S. Diplomatic and Assistance Relations with Haiti, Report Submitted by Senator Edward W. Brooke to the US Congress, Senate Committee on Appropriations, November 1977, p.9.

<sup>[9]</sup> For a more thorough description of the security apparatus under Duvalier, see National Coalition for Haitian Refugees, Americas Watch (now Human Rights Watch/Americas), and Lawyers Committee for International Human Rights, *Rights Denied: A Report on Human Rights in Haiti in 1984* (New York: Human Rights Watch, 1985).

<sup>[10]</sup> See US Embassy description of the Haitian Armed Forces in Factors Affecting U.S. Diplomatic and Assistance Relations with Haiti, Report Submitted by Senator Edward W. Brooke to the US Congress, Senate Committee on Appropriations, November 1977, p. 35.

<sup>[11]</sup> Ibid.

<sup>[12]</sup> Ibid.

<sup>[13]</sup> Lawyers Committee for International Human Rights, Americas Watch (now Human Rights Watch/Americas), and International League for Human Rights, *Haiti: Report of a Human Rights Mission* (New York: Human Rights Watch, 1983).

<sup>[14]</sup> National Coalition for Haitian Refugees, Americas Watch, and Lawyers Committee for International Human Rights, *Rights Denied: A Report on Human Rights in Haiti in 1984*.

<sup>[15]</sup> Lawyers Committee for International Human Rights, Americas Watch, and International League for Human Rights, *Haiti: Report of a Human Rights Mission*.

<sup>[16]</sup> National Coalition for Haitian Refugees, Americas Watch, and Lawyers Committee for International Human Rights, *Rights Denied: A Report on Human Rights in Haiti in 1984*.

<sup>[17]</sup> Loi Anti-Communiste, *Le Moniteur*, April 28, 1969. The law under article 1 provided that: Communist activities, no matter what their form, are hereby declared crimes against the security of the State and in article 2 that all those, in whatever capacity who give assistance to the authors of those crimes shall be declared guilty of the very same crimes. The perpetrators of and accomplices in crimes were to be prosecuted and subject to the death penalty. For the full text, see Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Haiti*, December 13, 1979, <http://www.cidh.oas.org/countryrep/Haiti79eng/toc.htm> (accessed February 2, 2011), ch. 4.

<sup>[18]</sup> Ibid.

<sup>[19]</sup> See, e.g., Amnesty International, Amnesty International Annual Report, 1977, 1977, <https://docs.google.com/viewer?>  
[a=v&pid=explorer&chrome=true&srcid=0B8cCCGjZffqhZTVkYzJkN2MtZjgxZi00ZjNiLWE1MGYtZGY2YTtxY2E3MzI1&hl=en](https://docs.google.com/viewer?) (accessed March 31, 2011).

- [20] Americas Watch (now Human Rights Watch/Americas), and Committee to Protect Journalists, *Journalists in Jeopardy: The Haitian Reality* (New York: Human Rights Watch, October 1984).
- [21] Amnesty International, The Situation in Haiti, April 20, 1976, citing Open letter to the president, *Le Petit Samedi Soir*, December 1975.
- [22] Haiti Briefing, Amnesty International, 1985, p. 1.
- [23] Ibid.
- [24] Affidavit of Patrick Lemoine, duly signed State of New York, date unknown, on file with Human Rights Watch.
- [25] Amnesty International, The Situation in Haiti; see also, Amnesty International, Report on the Situation of Political Prisoners in Haiti, 1973. See also, US Department of State, State Department Human Rights Report, 1978, (citing Amnesty International, Amnesty International Report, 1975-1976, 1976, for the proposition that Haiti has one of the highest prisoner mortality rates in the world).
- [26] See, e.g., Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Haiti.
- [27] See, e.g., Human Rights Watch Interview with Jean [last name withheld], Port-au-Prince, March 17, 2011; see also, Patrick Lemoine, *Fort Dimanche, Dungeon of Death (Fort Dimanche, Fort La Mort)* (Port-au-Prince: Editions du CIDIHCA, 1996).
- [28] For a description of Claude Rosiers ordeal, see Claude A. Rosier, *The Triangle of Death, a journal of a political prisoner (Le triangle de la mort, journal d'un prisonnier politique)* (Port-au-Prince: Imprimerie Henri Deschamps, 2003).
- [29] Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Haiti.
- [30] Human Rights Watch Interview with Bobby Duval, political prisoner arrested April 20, 1976 and released in the amnesty of September 21, 1977, Port-au-Prince, February 8, 2011.
- [31] Human Rights Watch Interview with Bobby Duval, Port-au-Prince, March 17, 2011.
- [32] See Human Rights Watch Interview with Bobby Duval, Port-au-Prince, February 8, 2011. When I left Fort Dimanche, I weighed less than 100 pounds. See also Affidavit of Patrick Lemoine, duly signed State of New York, date unknown, on file with Human Rights Watch, (stating I had lost almost 100 lbs., now weighing less than 90 lbs.).
- [33] Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Haiti.
- [34] Ibid.
- [35] Ibid.
- [36] Human Rights Watch Interview with Bobby Duval, Port-au-Prince, March 17, 2011.
- [37] The President for Life of the Republic addresses the balance of governmental action (Le President vie de la Rpublique adresse le bilan de l'action gouvernementale), *Le Nouvelliste*, January 3, 1977.
- [38] Young lectures Haitians, *Knight News Service*, August 16, 1977.
- [39] Kathleen Teltsch, Young Urges Haitian Leader to Move on Rights, *New York Times*, August 16, 1977; the full speech, in French original, available at La dclaration de lAmbassadeur Young la Confrence de Presse du 15 Aot, *Le Nouvelliste*, August 1, 1977.
- [40] Young lectures Haitians, *Knight News Service*, August 16, 1977.
- [41] Timothy McNulty, Duvalier says Haiti will allow rights inspection, *Chicago Tribune*, August 16, 1977.
- [42] Bureau of Intelligence and Research Current Reports, Ambassador Young in Ha!! [sic], August 18, 1977, declassified April 25, 2005.
- [43] Memorandum for Dr. Brzezinski from the Situation Room, September 8, 1977, declassified January 31, 2005.
- [44] Memorandum for Zbigniew Brzezinski from North-South, National Security Council, September 12, 1977, declassified April 30, 2008. Another briefing to Brzezinski quotes an unidentified source saying that we will hide what has to be hidden. See Memorandum for Dr. Brzezinski from the Situation Room, September 8, 1977, declassified January 31, 2005.
- [45] Briefing of the Central Intelligence Agency Directorate of Intelligence, Significant Developments Related to IHB US Stand on Human Rights (23-29 September 1977), September 1977, declassified April 30, 2008.
- [46] The Speech, in Crele, of the President for Life of the Republic (L'Allocution en creole du President vie de la Rpublique), *Le Nouvelliste*, September 24-25, 1977. The original in non-standard Haitian Crele is: Jodi matin an, 22 septembre, aa nan pòin youn sel grain prizonier politik enc, nan prizon sou la t dHaiti. C pas psonne qui mandm f li. C volont pam qui decidl.
- [47] Ibid.
- [48] Briefing of Central Intelligence Agency Directorate of Intelligence, Significant Developments Related to IHB US Stand on Human Rights (23-29 September 1977).. See also Central Intelligence Agency Directorate of Intelligence, Significant Developments Related to the [sic] US Stand on Human Rights (September 16-22, 1977), September 1977, declassified April 30, 2008.
- [49] Amnesty International, Amnesty International Newsletter, June 1978, Volume VIII, Number 6; see also Group Questions Fate of Haitian Prisoners, *Agence France-Presse*, October 18, 1977.
- [50] Human Rights Watch Interview with Bobby Duval, Port-au-Prince, March 17, 2011.
- [51] Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Haiti.
- [52] Ibid.
- [53] Ibid.
- [54] Bernard Diederich, *The Price of Blood, Volume II (Le Prix du Sang, Tome II), Jean-Claude Duvalier: 1971-1986: The Heir (L'Héritier)* (Port-au-Prince: Imprimerie Henri Deschamps, 2011), p. 151, citing a letter from the Inter-American Commission for Human Rights to the government of Haiti, dated December 27, 1978. Original letter unavailable
- [55] Americas Watch (now Human Rights Watch/Americas) and National Coalition for Haitian Refugees, *Haiti: Human Rights Under Hereditary Dictatorship* (New York: Human Rights Watch, October 1985), p. 28.
- [56] Ibid.
- [57] See Joseph B. Treaster, Wave of Protests Sweeps Over Haiti: Harsh Government Response is Said to Be Jeopardizing Foreign Aid from the U.S., *The New York Times*, December 22, 1985.
- [58] Joseph B. Treaster, U.S. Acts to Reduce Aid to Haiti, Charging Human Rights Abuses, *The New York Times*, January 31, 1986.
- [59] Joseph B. Treaster, Duvalier Imposes a State of Siege; Denies his ouster, *The New York Times*, February 1, 1986.
- [60] James Brooke, Once More, Duvalier Lets Loose the Bogeyman, *The New York Times*, February 5, 1986.
- [61] Michael S. Hooper, Esq., The Monkey Tails Still Strong, in North American Congress on Latin America ed., *Haiti: Dangerous Crossroads* (Boston: South End Press, 1995). Michael S. Hooper, Esq. served as Executive Director of the National Coalition for Haitian Refugees, a leading Haitian human rights organization based in the United States, during the Duvalier years. He wrote over 10 human rights reports on conditions in Haiti under Duvalier, including reports for Human Rights Watch (Americas Watch) and Lawyers Committee for International Human Rights.
- [62] National Coalition for Haitian Refugees and Americas Watch (now Human Rights Watch/Americas), Duvalierism Since Duvalier, (New York: Human Rights Watch, 1986).
- [63] Keith B. Richburg, Skulls and Charred Bones Litter a Mass Grave Site in Haiti, *The Washington Post*, February 4, 1986.
- [64] Ibid.
- [65] Testimony of Evans Paul, 1985, available in Amnesty International, Haiti Briefing, March 1985, p.7-8.
- [66] Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Haiti.
- [67] Ibid.
- [68] Amnesty International, The Situation in Haiti, April 20, 1976, citing Open letter to the president, *Le Petit Samedi Soir*, December 1975.
- [69] Amnesty International, Amnesty International Annual Report, 1981, 1981, <https://docs.google.com/viewer? a=v&pid=explorer&chrome=true&srcid=0B8cCCGjZffqhYmRiYjFhMThtM2YwMS00MDEzLWI5MjctNzJk0MjBiODRh&hl=en> (accessed March 31, 2011).
- [70] Americas Watch (Now Human Rights Watch/Americas) and Lawyers Committee for International Human Rights, *Election 1984: Duvalier Style* (New York: Human Rights Watch, 1984), <http://www.hrw.org/en/reports/1984/03/31/election-1984-duvalier-style>. See also, Amnesty International, Haiti: Human Rights Violations: October 1980-October 1981, 1981, <https://docs.google.com/leaf?id=0B8cCCGjZffqhMzAwMGE3NGEzTUzOC00OGUwLThkNDItZTljNmJhNTc3N2Jk&sort=name&layout=list&pid=0B8cCCGjZffqhMDYwODcyYTgtMGJhYy00MTY4LTlmMzktODZhM2I5MjksZDZz&cindex=5> (accessed March 31, 2011).
- [71] Amnesty International, Haiti: Human Rights Violations: October 1980-October 1981; see also Karen Payne, 4 exiled Haitians tell here of beatings of jailed colleagues, *The Miami News*, December 3, 1980 (reporting that the exiled Haitians said Joseph was severely beaten and could be heard moaning in his cell).
- [72] Amnesty International, Haiti: Human Rights Violations: October 1980-October 1981.

- [73] See, e.g., Testimony of Yvens Paul, in Amnesty International, Haiti: Human Rights Violations: October 1980–October 1981, pp. 7–8; and Amnesty International, Amnesty International Annual Report, 1986, 1986, <https://docs.google.com/leaf?id=0B8cCCGjZffqhMzk4ZTIkMzAtYjNhMS00OTeyLWE2NzltMmExMDBjMjAwOTgy&sort=name&layout=list&pid=0B8cCCGjZffqhNmY4ZTA2OGQtMjYzZS00MTcyLWI2NzltZmY2ZjAwYzNlZDA1&cindex=13> (accessed March 21, 2011); and Amnesty International, Amnesty International Annual Report, 1983 1983, <https://docs.google.com/leaf?id=0B8cCCGjZffqhZTU0ZGY3MGMiZDUxYS00ZDY4LWEyMzltOWI0MWRIODE2ZTdh&sort=name&layout=list&pid=0B8cCCGjZffqhNmY4ZTA2OGQtMjYzZS00MTcyLWI2NzltZmY2ZjAwYzNlZDA1&cindex=13> (the torture of Gerard Duclerville) (accessed March 21, 2011); Amnesty International, Amnesty International Annual Report, 1981, 1981 (a form of torture used in the barracks, according to testimony of a former *Tonton Macoute*); and Amnesty International, Torture in the 80s: Global Survey, 1983.
- [74] See, e.g., Testimony of Yvens Paul, in Amnesty International, Haiti: Human Rights Violations: October 1980–October 1981, pp. 7–8.
- [75] Haiti Paper Closed In Rights Protest, *The Hartford Courant*, December 16, 1977.
- [76] Greg Chamberlain, Haiti in grip of Duvalier terror, *The Guardian*, September 21, 1979.
- [77] Ibid.
- [78] Ibid.
- [79] Ibid.
- [80] The important speech of the President for Life of the Republic on the occasion of the 22nd of September, 1979 (L'important Discours du President Vie de la Republique: A l'occasion du 22 Septembre 1979), Jean-Claude Duvalier, September 22, 1979.
- [81] Virginia Hamill, U.S. Protests Attack on Diplomat At Human Rights Meeting in Haiti, *The Washington Post*, November 11, 1979.
- [82] Americas Watch, and Lawyers Committee for International Human Rights, *Rights Denied: A report on Human Rights in Haiti 1984*.
- [83] Hamill, U.S. Protests Attack on Diplomat At Human Rights Meeting in Haiti, *The Washington Post*.
- [84] Martin-Luc Bonnardot and Gilles Danroc, *The Fall of the House of Duvalier (La Chute de la Maison Duvalier)*, (Paris-Montreal: Karthala-CIDIHCA, 1989), p.309
- [85] Greg Chamberlain, Duvalier Sacking, *The Guardian*, November 15, 1979.
- [86] Jo Thomas, Haitian Dissidents Fear Harsher Line: Attack on Rally Raises Questions Over Duvaliers Commitment to Liberalization Policy, *The New York Times*, November 27, 1979.
- [87] Hamill, U.S. Protests Attack on Diplomat At Human Rights Meeting in Haiti, *The Washington Post*.
- [88] Ibid.
- [89] Ibid.
- [90] [U]ne rixe entre des assistants.... la suite d'opinions mises dans les propos d'introduction et que ne partageaient pas des membres de l'auditoire). Bonnardot and Danroc, *The Fall of the House of Duvalier (La Chute de la Maison Duvalier)*, p.309, citing DIAL n. 509, January 17, 1980. See also Haitis shaky liberalization shows signs of retreat, *The Sun*, February 10, 1980.
- [91] Americas Watch (now Human Rights Watch/Americas) and Committee to Protect Journalists Report, *Journalists in Jeopardy: the Haitian Reality* (New York: Human Rights Watch, October 1984) p.2, citing Decree de la Presse, *Le Moniteur*, April 3, 1980.
- [92] Americas Watch and Committee to Protect Journalists, *Journalists in Jeopardy: the Haitian Reality*, p.3.
- [93] Ibid., p. 4.
- [94] Ibid., p. 5.
- [95] Ibid., pp. 5–6.
- [96] Ibid., p. 6.
- [97] Ibid.
- [98] Ibid.
- [99] Ibid., p. 23.
- [100] After the November 9, 1979 event, Duvalier appointed Georges Salomon as foreign minister, who in turn established a human rights office. Then, in December 1979, a commission of journalists was established to reform the harsh press law imposed three months prior. See Karen De Young, Haiti Battle for Control Begins to Surface: Some Liberalization Appears as Duvalier Faces Problems, *Los Angeles Times*, October 9, 1980.
- [101] Letter addressed to Sr. David Padilla, assistant to the executive secretary of the Inter-American Commission on Human Rights, from Haitian Refugee Project, December 2, 1980.
- [102] Karen Payne, Haitian reporter jailed for telling the truth, *The Miami News*, November 18, 1980.
- [103] Human Rights Watch Interview with Michle Montas, Port-au-Prince, March 16, 2011.
- [104] Robert, Nancy, and Michael Heinl, *Written in Blood: the Story of the Haitian People, 1492–1995* (Lanham, MD: University Press of America, 1997), pp. 677–78.
- [105] Marlise Simons, Haiti Using Foreign Aid for Political Ends, *The Washington Post*, December 21, 1980.
- [106] Letter addressed to Sr. David Padilla, Assistant to the Executive Secretary of the Inter-American Commission on Human Rights, from Haitian Refugee Project, December 2, 1980.
- [107] Human Rights Watch Interview with Michle Montas, March 16, 2011.
- [108] You have to remember, this was a time before cell phones; we could not just call them up and find out where they were. Human Rights Watch Interview with Michle Montas, March 16, 2011.
- [109] Karen Payne, Haiti Jails Journalists, Dissidents, *The Miami News*, December 1, 1980.
- [110] Human Rights Watch Interview with Michle Montas, March 16, 2011.
- [111] See, e.g., Lawyers Committee for International Human Rights, Report on the August 1981 Trial and November 1981 Appeal of 26 Political Defendants in Haiti, March 1982, p. i. and Letter to Seor David Padilla, Assistant to the Executive Secretary of the Inter-American Commission on Human Rights, from Haitian Refugee Project, December 2, 1980.
- [112] US Concerned By Arrest of Haitians, *Atlanta Daily*, December 2, 1980. A spokesperson for the US State Department expressed grave concern about the arrests, stating that [the United States] would view an attempt by Haitian authorities to silence the free expression of political opinion as inconsistent with the Haitian governments previous expression of a more liberal system.
- [113] Human Rights Watch Interview with Michle Montas, March 16, 2011.
- [114] Ibid. Also, Human Rights Watch Telephone Interview with victim, March 31, 2011. In a contemporaneous book on political prisoners, Valm and Orcel are identified as leading the anti-communism team, while Pierre was identified as sadistic killer. See Le Regroupement Des Forces Democratiques Haitiennes, *Prisonniers Politiques en Haiti* (Montreal: RFDH, 1977). Gregoire Eugene recounted to *Chicago Tribune* a conversation he had with Valm after his arrest on November 28, 1980. According to Eugene, Valm told him the reason he would be exiled is because [the last three issues of [his periodical] Fraternité were too harsh. . . [he was] stopping friendly foreign governments from aiding the people of Haiti. Bernard Nossiter, Editors passport Good only for exit, *Chicago Tribune*, December 7, 1980. Valm, Orcel, and Pierewere also named by Lucien Rigaudas the people who interrogated him in 1978 at SD headquarters before he wassent to the National Penitentiary. See Wendell Rawls, Jr., Baby Docs Haitian Terror, *The New York Times Magazine*, May 14, 1978.
- [115] Human Rights Watch Interview with Michle Montas, March 16, 2011.
- [116] Human Rights Watch Interview with Michle Montas, March 16, 2011.
- [117] Ministry of Information, Non, le complot ne passera pas, *Le Nouveau Monde*, November 29–30, 1980.
- [118] Communiqué, *Le Nouvelliste*, December 1, 1980; English translation available in Amnesty International, Haiti Briefing, p. 4. A US embassy official found the communiqué to be unclear, saying [w]e have some indications the government does intend to press formal charges and have trials, but then we hear rumors that the whole operation was basically designed to put people in their places and stop the press from being so uppity. I dont know which is right I dont know what [the communiqué] means, but thats all they said [the US Embassy] has intervened with senior (Haitian) officials.; Karen Payne, Haiti silent on those rounded up, *The Miami News*, December 2, 1980.
- [119] Faites ce que vous voulez avec ces journalistes. Text of the interview unavailable: for a description of the interview and direct quotations, see Bernard Diederich, *Le Prix du Sang, Tome II, Jean-Claude Duvalier: 1971–1986: LHritier*, pp. 200–01.
- [120] Ibid.
- [121] Ibid.
- [122] They failed in their criminal attempt, the revolution continues its triumphal march (Ils ont choue dans leur tentative criminelle la Rvolution poursuit sa marche triomphale), *Le Nouveau Monde*, December 4–5, 1980.
- [123] The dismantling of a network of communist agitators (Dmantlement dun rseau dagitateurs communistes), *Le Nouveau Monde*, December 4–5, 1980, extracted from Bulletin No. 13 of the DIRP.



[124]Ministry of Information, The trap (Le pige), *Le Nouveau Monde*, December 4-5, 1980.

[125] Communiqué, *Le Nouveau Monde*, December 4-5, 1980.

[126]The strong message of President Jean-Claude Duvalier (Le vibrant message du Président Jean-Claude Duvalier), *Nouveau Monde*, December 4, 1980 (in non-standard Creole); a French summary of the speech is available at The Grand Demonstration this morning in front of the Palace (La Grande Manifestation de ce Matin Devant Le Palais), *Le Nouvelliste*, December 4, 1980.

[127]Text of the interview unavailable; for a description of the interview and direct quotations, see see Diederich, *The Price of Blood, Volume II (Le Prix du Sang, Tome II)*, Jean-Claude Duvalier: 1971-1986: *The Heir (L'Héritier)*, pp. 200-01.

[128] Ibid

[129] Jo Thomas, Duvalier Defends Arrests, Warns Haiti Wont Tolerate Interference, *The New York Times*, December 10, 1980; Duvalier reiterated this point in an interview six months later with the Miami News, responding to a question about November 28, 1980 by stating, we are obliged to protect democratization. We exiled individuals who imperiled the democratic process. Karen Payne interviewing Duvalier, Duvalier: I cant stop boat people, *The Miami News*, June 30, 1981.

[130] Duvalier warns the US against the loss of the Western world to the victorious aggression of communism (Duvalier met les E.U. en garde contre la perte du monde occidental par l'agression victorieuse du communisme), *Le Matin*, December 11, 1980.

[131] For a complete overview of the resulting criminal trial, see Lawyers Committee for International Human Rights, Report on the August 1981 Trial and November 1981 Appeal of 26 Political Defendants in Haiti, March 1982.

[132] Letter to President Jean-Claude Duvalier from Lawyers Committee for International Human Rights, December 9, 1980; see also Amnesty International, Haiti: Human Rights Violations: October 1980-October 1981, 1981. See also Karen Payne, 4 exiled Haitians tell here of beatings of jailed colleagues, *The Miami News*, December 3, 1980 (reporting that the exiled Haitians recounted being forced to listen as at least two of their colleagues were beaten.).

[133] Amnesty International, Haiti: Human Rights Violations: October 1980-October 1981, 1981.

[134] Testimony of Yves Richard in Amnesty International, Haiti: Human Rights Violations: October 1980-October 1981, 1981.

[135] Human Rights Watch Interview with Michle Montas, March 16, 2011.

[136] Amnesty International, Amnesty International Annual Report, 1981, 1981.

[137] Human Rights Watch Interview with Michle Montas, March 16, 2011.

[138] See, e.g., Human Rights Watch email Beverly Bell, founder and outreach coordinator for Washington Office on Haiti, a human rights organization, from 1983-1987, focusing on the Duvalier dictatorship human rights activist, March 16, 2011, stating, I wrote many reports about violence and abuse under Duvalier and never once thought to gender it. See also Human Rights Watch Telephone Interview, Michael Levy, former Amnesty International USA Haiti Coordinator, April 3, 2011, stating, It was difficult to get information out of Haiti. It was difficult to information about who was tortured, so it was much harder still to get information that only available in a face-to-face type meeting Were we aware that gender-based violence was occurring? Definitely. But, we were operating under a methodology that required multiple sources to confirm, for credibility. How could you get multiple sources in a rape case, under these conditions? And, we would have put women at risk Its hard to imagine the atmosphere of terror and mistrust that was created by the *macoute* system.

[139] On interlocutory appeal, the Cour de Cassation, Haitis highest court, found on July 24, 2001 in favor of appellants Jean Sambour and Alexandre Paul, who argued that the Cour lacked jurisdiction over the case until the *Cour Supérieure des Comptes et du Contentieux Administratif* issued an avis de dbit in the case.

[140] According to representative of the government of Haiti, Andre Antoine, before the Inter-American Commission for Human Rights, March 28, 2011. See Impunity for Human Rights Violations during the Duvalier Dictatorship in Haiti, Hearing of the Inter-American Commission for Human Rights, available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=En&Session=122&page=1> (accessed April 1, 2011).

[141] See Article 45 of the Haitian Penal Code, which states:

Those who, through gifts, promises, threats, abuse of power, machinations or culpable artifice, have caused the criminal act or gives instructions to commit it.

Those who have procured weapons, instruments or other means to be used in the criminal act or that they know would be used in the criminal act.

Those who, knowingly, aided or assisted the perpetrator or perpetrators of the crime in the completion of criminal acts, without prejudice to special penalties made by this Code against conspiracies or incitement detrimental to the internal or external security of the state, even where the crime that was the subject of the conspiracy was not committed.

[142] Article 6 (1) of the ICTR statute states that a person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime. UN Security Council, Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006), 8 November 1994, art. 6(1); *Prosecutor v. Akayesu*, International Criminal Tribunal for Rwanda, Case No. ICTR-96-4-T, Judgment (Trial Chamber), September 2, 1998, para. 484; see also *Prosecutor v. Rutaganda*, International Criminal Tribunal for Rwanda, Case No. ICTR-96-03-T, Judgment (Trial Chamber), December 6, 1999, para. 43.

[143] The term aiding means assisting or helping another to commit a crime, and the term abetting means encouraging, advising, or instigating the commission of a crime. *Prosecutor v. Semanza*, International Criminal Tribunal for Rwanda, Case No. ICTR-97-20-T, Judgment (Trial Chamber), May 15, 2003, para. 384.

[144] See, e.g., *Prosecutor v. Akayesu*, Judgment (Trial Chamber), September 2, 1998, par. 484: It is not necessary for the person aiding or abetting another to commit the offence to be present during the commission of the crime.; *Prosecutor v. Rutaganda*, Judgment (Trial Chamber), December 6, 1999, par. 43: In both instances, it is not necessary that the person aiding and abetting another to commit an offence be present during the commission of the crime. The relevant act of assistance may be geographically and temporally unconnected to the actual commission of the offence.; *Prosecutor v. Bagilishema*, International Criminal Tribunal for Rwanda, Case No. ICTR-95-1A, Judgment (Trial Chamber), June 7, 2001, par. 33: [T]he participation in the commission of a crime does not require actual physical presence or physical assistance.; *Prosecutor v. Kayishema and Ruzindana*, International Criminal Tribunal for Rwanda, Case No. ICTR-95-01, Judgment (Trial chamber), May 21, 1999, para. 200: It is not presupposed that the accused must be present at the scene of the crime, nor that his contribution be a direct one. That is to say, [ ] the role of the individual in the commission of the offence need not always be a tangible one. This is particularly pertinent where the accused is charged with the aiding or abetting of a crime.

[145] In the case of *Prosecutor v. Blaskic*, the court of first instance of the ICTY decided: The Trial Chamber holds that the *actus reus* of aiding and abetting may be perpetrated through an omission, provided this failure to act had a decisive effect on the commission of the crime and that it was coupled with the requisite *mens rea*. In this respect, the mere presence at the crime scene of a person with superior authority, such as a military commander, is a probative indication for determining whether that person encouraged or supported the perpetrators of the crime. *Prosecutor v. Blaskic*, International Criminal Tribunal for the former Yugoslavia, Case No. IT-95-14-T, Judgment (Trial Chamber), March 3, 2000, para. 284.

[146] *Prosecutor v. Semanza*, Judgment (Trial Chamber), May 15, 2003, paras. 387-89.

[147] Ibid.

[148] See Constitution of the Republic of Haiti, 1964, arts.188-92.

[149] See Constitution of the Republic of Haiti, 1983.

[150] See, e.g., Jean-Claude Duvalier, *Allocution du 21 juin 1971 du Chef de l'Etat (Jean-Claude Duvalier) au nouveau commandant de la milice de Fort Dimanche*, (Port-au-Prince: Imprimerie Henry Deschamps (1978), where Duvalier identifies himself as [t]he Supreme Chief and Effective Head of the Armed Forces, the Police Forces and the National Security Volunteers (VSN) and highlights that he is now the only supervisor of the militia and that individuals who, either openly or secretly, get in the way of the path of [the] Revolution will be systematically be swept away by this great force of history. (unofficial translation) Ibid., as cited in Submission to the Inter-American Commission on Human Rights of Complainants and Haitian human rights organizations against ex-President for Life of the Republic of Haiti Jean-Claude Duvalier, Impunity in Haiti, March 28, 2011.

[151] The Speech, in Crele, of the President for Life of the Republic (L'allocution en creole du Président vie de la Rpublique), *Le Nouvelliste*, September 24-25, 1977. The original in non-standard Haitian Crele is: Jodi matin an, 22 septembre, aa nan pòin youn sel grain prizonier politic enc, nan prizon sou la t dHaiti. C pas psonne qui mandm f li. C volont pam qui decidl.

[152] Text of the interview unavailable, for a description of the interview and direct quotations, see Diederich, *The Price of Blood, Volume II (Le Prix du Sang, Tome II)*, Jean-Claude Duvalier: 1971-1986: *The Heir (L'Héritier)*, pp. 200-01.

[153] Rigauds case is examined at length in Wendell Rawls, Jr., Baby Docs Haitian Terror, *The New York Times Magazine*.

[154] Karen Payne interviewing Duvalier, Duvalier: I cant stop boat people, *The Miami News*, June 30, 1981.

[155] See the International Criminal Tribunal for the Former Yugoslavia case *Prosecutor v. Delalic, et al.*: That military commanders and other persons occupying positions of superior authority may be held criminally responsible for the unlawful conduct of their subordinates is a well-established norm of customary and conventional international law. *Prosecutor v. Delalic, et al.* (Celebici case), International Criminal Tribunal for the Former Yugoslavia, Case No. IT-96-21-A, Judgment (Appeals Chamber), February 20, 2001, para. 195; see also *Prosecutor v. Kajelijeli*, International Criminal Tribunal for Rwanda, Case No. ICTR 98-44A-A (Appeals Chamber), May 23, 2005, para. 85; *Prosecutor v. Muvunyi*, International Criminal Tribunal for Rwanda, Case No. ICTR 2000-55A-T (Trial Chamber), September 12, 2006, para. 473.

[156] Ordonnance de Jean SNAT FLEURY, Instructive Judge before the Trial Court of Gonaives, August 27 1999, p. 42: Whereas, as a general principle of law and custom military, a senior military who exercises command is responsible and is obliged as a commander to ensure the proper conduct of his subordinates. In the same vein, after performing the act of issuing an order, a commander must remain vigilant and make necessary adjustments that are required by the evolving situation. In addition, a commander is responsible if he knew that his troops or those under his command committed or were committing a crime and he failed to do what is necessary and reasonable to ensure the law is respected.

[157] Haitian Junta is Sentenced in Absentia, *The New York Times*, November 19, 2000.

[158] *Prosecutor v. Delalic, et al.* (Celebici case), International Criminal Tribunal for the Former Yugoslavia, Case No. IT-96-21-T, Judgment (Trial Chamber), November 16, 1998, para. 347; *Prosecutor v. Kordic and Cerkez*, International Criminal Tribunal for the former Yugoslavia, Case No. IT-95-14/2A, Judgment (Appeals Chamber), December 17, 2004, para. 839. See also Article 28 of Statute of the International Criminal Court: With respect to superior and subordinate relationships not described in paragraph (a) [military chain of command], a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where: (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes; (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and (iii) The



superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution. Rome Statute of the International Criminal Court, adopted July 17, 1998, Doc. UN. A/CONF. 183/9, entered into force July 1, 2002, art. 28.

[159]Crime by Omission (Infraction par omission). Ordonnance of Jean SNAT FLEURY, p. 97 citing Art. 86 of the first Additional Protocol to the Geneva Conventions. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

[160]*Prosecutor v. Delalic, et al.* (Celebici case), International Criminal Tribunal for the Former Yugoslavia, Case No. IT-96-21-A, Judgment (Appeals Chamber), February 20, 2001, para. 197: In determining questions of responsibility it is necessary to look to effective exercise of power or control and not to formal titles. Effective control means the material ability to prevent or punish criminal conduct, para. 256; *Prosecutor v. Blaskic*, International Criminal Tribunal for the former Yugoslavia, Case No. IT-95-14, Judgment (Appeals Chamber), July 29, 2004, para. 375; *Prosecutor v. Bagilishema*, International Criminal Tribunal for Rwanda, Case No. ICTR-95-1A-A (Appeals Chamber), July 3, 2002, para. 50: Under Article 6(3), a commander or superior is the one who possesses the power or authority in either a *de jure* or a *de facto* form to prevent a subordinate's crime or to punish the commission of a crime by a subordinate after the crime is committed.

[161]*Prosecutor v. Kajelijeli*, International Criminal Tribunal for Rwanda, Case No. ICTR 98-44A-A, Judgment (Appeals Chamber), May 23, 2005, para. 85: [I]t is settled both in ICTR and ICTY jurisprudence that the definition of a superior is not limited to military superiors; it also may extend to *de jure* or *de facto* civilian superiors. *Prosecutor v. Delalic, et al.* (Celebici case), Judgment (Trial Chamber), November 16, 1998, para. 377: [I]t is . . . the Trial Chambers conclusion that a superior, whether military or civilian, may be held liable under the principle of superior responsibility on the basis of his *de facto* position of authority. . . . *Prosecutor v. Kordic and Cerkez*, International Criminal Tribunal for the Former Yugoslavia, Case No. IT-95-14/2-T, Judgment (Trial Chamber), February 26, 2001, para. 416: [A] government official will only be held liable under the doctrine of command responsibility if he was part of a superior-subordinate relationship, even if that relationship is an indirect one.

[162]93rd US Congress, Senate Committee on Appropriations, U.S. foreign assistance for Haiti, Report 93-620, July 1974; see also Factors Affecting U.S. Diplomatic and Assistance Relations with Haiti, Report Submitted by Senator Edward W. Brooke to the US Congress, Senate Committee on Appropriations, November 1977.

[163] Lawyers Committee for International Human Rights, Americas Watch (now Human Rights Watch/Americas), and International League for Human Rights, *Haiti: Report of a Human Rights Mission*

[164]93rd US Congress, Senate Committee on Appropriations, "U.S. foreign assistance for Haiti," Report 93-620, July 1974; see also Factors Affecting U.S. Diplomatic and Assistance Relations with Haiti, Report Submitted by Senator Edward W. Brooke to the US Congress, Senate Committee on Appropriations, November 1977.

[165]*Prosecutor v. Limaj et al.*, International Criminal Tribunal for the Former Yugoslavia, Case No. IT-03-66-T, Judgment (Trial Chamber), November 30, 2005, para. 523; *Nahimana, Barayagwiza and Ngeze*, International Criminal Tribunal for Rwanda, Case No. ICTR 99-52-A, Judgment (Appeals Chamber), November 28, 2007, para. 791; and, *Prosecutor v. Bagilishema*, Judgment (Appeals Chamber), July 3, 2002, para. 37.

[166]*Limaj et al.*, (Trial Chamber), November 30, 2005, para. 524, *Prosecutor v. Galic*, International Criminal Tribunal for the former Yugoslavia, Case No. IT-98-28-T, Judgment (Trial Chamber), December 5, 2003, paras. 174 and 427; *Prosecutor v. Kordic and Cerkez*, Judgment (Trial Chamber), February 26, 2001, para. 427; *Ntagerura, Bagambiki, and Imanishimwe*, International Criminal Tribunal for Rwanda, Case No. ICTR 99-46-T, Judgment (Trial Chamber), February 25, 2004, para. 629.

[167]*Limaj et al.*, (Trial Chamber), November 30, 2005, para. 524; *Ntagerura, Bagambiki, and Imanishimwe*, (Trial Chamber), February 25, 2004, para. 648.

[168]*Blagojevic and Jokic*, International Criminal Tribunal for the former Yugoslavia, Case No. IT-02-60-T, Judgment (Trial Chamber), January 17, 2005, para. 792; and *Brdjanin*, International Criminal Tribunal for the former Yugoslavia, Case No. IT-99-36-T, Judgment (Trial Chamber), September 1, 2004, para. 278.

[169]*Delalic et al.*, (Appeals Chamber), February 20, 2001, para. 241, *Ntagerura, Bagambiki, and Imanishimwe*, (Trial Chamber), February 25, 2004, para. 629.

[170]*Delalic et al.*, (Appeals Chamber), February 20, 2001, para. 238, This information does not need to provide specific information about unlawful acts committed or about to be committed. *Nahimana, Barayagwiza and Ngeze* (Appeals Chamber), November 28, 2007, para. 791; *Prosecutor v. Halilovic*, International Criminal Tribunal for the Former Yugoslavia, Case No. IT-01-48, Judgment (Trial Chamber), November 16, 2005, para. 65.

[171]*Delalic et al.*, (Appeals Chamber), February 20, 2001, para. 238: As to the form of the information available to him, it may be written or oral, and does not need to have the form of specific reports submitted pursuant to a monitoring system.

[172]*Delalic et al.*, (Appeals Chamber), February 20, 2001, para. 239; *Galic*, (Trial Chamber), December 5, 2003, para. 175.

[173]*Blaskic*, (Appeals Chamber), July 29, 2004, para. 406: [T]he Appeals Chamber considers that the mental element had reason to know as articulated in the Statute, does not automatically imply a duty to obtain information. The Appeals Chamber emphasizes that responsibility can be imposed for *deliberately* refraining from finding out but not for negligently failing to find out. (emphasis in original). *Delalic, et al.*, (Appeals Chamber), February 20, 2001, para. 226.

[174] Telegram from US Embassy in Haiti to US State Department, Senator Edward W. Brooke Calls on President Jean-Claude Duvalier, April 1974, declassified June 2005, paras. 1, 3.

[175] See Telegram from US Embassy in Haiti to US State Department, Duvalier pardons 26 political prisoners, January 1975, declassified July, 2006, para. 7.

[176] Factors Affecting U.S. Diplomatic and Assistance Relations with Haiti, Report Submitted by Senator Edward W. Brooke to the US Congress, Senate Committee on Appropriations, November 1977, p. 10.

[177] Ibid.

[178] 93rd US Congress, Senate Committee on Appropriations, U.S. foreign assistance for Haiti, Report 93-620, July 1974; see also Factors Affecting U.S. Diplomatic and Assistance Relations with Haiti, Report Submitted by Senator Edward W. Brooke to the U.S. Congress, Senate Committee on Appropriations, November 1977; see also Telegram from US Embassy in Haiti to US State Department, Senator Edward W. Brooke Calls on President Jean-Claude Duvalier; and Telegram from US Embassy in Haiti to US State Department, Duvalier pardons 26 political prisoners indicating that Duvalier shared the report with his cabinet.

[179] Telegram from US Embassy in Haiti to US State Department, Senator Edward W. Brooke Calls on President Jean-Claude Duvalier, paras.1, 3.

[180] Ibid., paras.1, 3.

[181] Greg Chamberlain, 12 gaoled in snub to the US, *The Guardian*, September 18, 1974.

[182] Duvalier pardoned 26 persons the US embassy considered political prisoners in January 1975, see Telegram from US Embassy in Haiti to US State Department, Duvalier pardons 26 political prisoners, para. 1. On December 24, 1976, Duvalier released 140 prisoners, 84 that Minister of Justice Aurelien Jeanty announced were political prisoners. See Order of Grace of his excellency the President for Life of the Republic (L'Arrt de grace de S. Ex. Le President vie de la Rpublique), *Le Nouvelliste*, December 27, 1976; and The liberation of 140 political and common law detainees (La libration des 140 dtenus politiques et de droit commun), *Le Nouvelliste*, December 27, 1976; and, also, The AFP comments (LAFP commente), *Le Nouvelliste*, December 27, 1976. According to Jeanty, this decision of President Duvalier [to grant amnesty] was part of the policy of appeasement and unity. Ibid.

[183] See, e.g., Telegram from US Embassy in Haiti to US State Department, Duvalier pardons 26 political prisoners, para. 6; Telegram from US Embassy in Haiti to US State Department, Duvalier releases Additional Political and other Prisoners in an Act of Christmas Clemency, December 1975, declassified July, 2006, para. 1.

[184] Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Haiti.

[185] *Prosecutor v. Limaj et al.*, International Criminal Tribunal for the Former Yugoslavia, Case No. IT-03-66-T, Judgment (Trial Chamber), November 30, 2005, para. 527; *Prosecutor v. Halilovic*, International Criminal Tribunal for the Former Yugoslavia, Case No. IT-01-48, Judgment (Trial Chamber), November 16, 2005, paras. 72, 93, 94; *Prosecutor v. Bagilishema*, International Criminal Tribunal for Rwanda, Case No. ICTR-95-1A, Judgment (Trial Chamber), June 7, 2001, para. 49.

[186] *Prosecutor v. Delalic, et al.* (Celebici case), Judgment (Trial Chamber) November 16, 1998, para. 935; *Blaskic*, (Appeals Chamber), July 29, 2004, para. 417; *Prosecutor v. Kamuhanda*, International Criminal Tribunal for Rwanda, Case No. ICTR 95-54A-T, Judgment (Trial Chamber), January 22, 2004, para. 610; *Bagilishema*, Judgment (Trial Chamber) June 7, 2001, paras. 47-48.

[187]*Halilovic*, Judgment (Trial Chamber), November 16, 2005, para. 100.

[188]*Bagilishema*, Judgment (Trial Chamber) June 7, 2001, para. 50. The Chamber is of the view that, in the case of failure to punish, a superior's responsibility may arise from his or her failure to create or sustain among the persons under his or her control, an environment of discipline and respect for the law. For example, in *Celebici*, the Trial Chamber cited evidence that Mucic, the accused prison warden, never punished guards, was frequently absent from the camp at night, and failed to enforce any instructions he did happen to give out. In *Blaskic*, the accused had led his subordinates to understand that certain types of illegal conduct were acceptable and would not result in punishment. Both Mucic and Blaskic tolerated indiscipline among their subordinates, causing them to believe that acts in disregard of the dictates of humanitarian law would go unpunished. It follows that command responsibility for failure to punish may be triggered by a broadly based pattern of conduct by a superior, which in effect encourages the commission of atrocities by his or her subordinates. Ibid.

[189] See Rome Statute of the International Criminal Court (Rome Statute), adopted July 17, 1998, Doc. UN. A/CONF. 183/9, entered into force July 1, 2002, art. 7.

[190] Decree (Decret), *Le Moniteur*, 141me Anne No. 51, June 26, 1986.

[191] Bernard H. Gousse, Haiti and the notion of crime against humanity (Haiti et la Notion de Crime Contre l'Humanit), *Le Nouvelliste*, February 24, 2011, <http://www.lenouvelliste.com/article.php?PubID=1&ArticleID=88934>. See also A case against Duvalier is not possible, according to his lawyers (Un procès contre Duvalier "pas possible", selon ses avocats), *Le Nouvelliste*, February 22, 2011, <http://www.lenouvelliste.com/article.php?PubID=1&ArticleID=8948>.

[192] 1987 Constitution of the Republic of Haiti, art. 276 (2), <http://pdba.georgetown.edu/constitutions/haiti/haiti.html> (accessed April 1st, 2011).

[193] Inter-American Court of Human Rights, Barrios-Altos Case, Judgment of March 14, 2001, Inter-Am. C. H.R. (Ser. C) No. 75 (2001), para. 41; see also Inter-American Court of Human Rights, Ituango Massacres Case, Judgment of July 1, 2006, Inter-Am. Ct. H.R. (Ser. C) No. 148 (2006); Inter-American Court of Human Rights, Case of La Cantuta, Judgment of November 29, 2006, Inter-Am. Ct. H.R. (Ser. C) No. 162 (2006); Inter-American Court of Human Rights, LaRochela Massacre Case, May 11, 2007, Inter-Am. Ct. H.R. (Ser. C) No. 163 (2007).

[194] See, e.g., Inter-American Court of Human Rights, Almonacid-Arellano Case, Judgment of September 26, 2006, Inter-Am. Ct. H.R. (Ser. C) No. 154 (2006).

[195] United Nations Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/2006/56 and Corr. 1 and A/HRC/4/41, 2006, para. 200.

[196]., September 1, 2004, para. 278 for the former Yugoslavia, they've endangered the stability and its critics. Article 289 of the Haitian Penal Code states: Those who, without orders from established authorities or where the law requires it, have arrested, detained or abducted any persons shall be punished with imprisonment from one to five years. (unofficial translation). Article L. 224-1 of the French Penal Code states in similar terms: The arrest, abduction, detention or imprisonment of a person without an order from an established authority and outside the cases provided by law is punished by twenty years' criminal imprisonment.

[197] Detention and illegal confinement are continuing offenses consisting of the withholding of any person illegally arrested against his/her will. (unofficial translation), Cour de cassation, Chambre criminelle November 4, 1988, pourvoi n 88-82121 <http://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007517556&fastReqId=878884624&fastPos=24&oldAction=rechExpJuriJudi>). See also, Cour de cassation, Chambre criminelle, July 26, 1966 Bull.crim. n 211 p.479.

[198] See Juris classeur procedure penale, Action publique, prescription, Art. 7 9, n 25; F. Desportes, L. Lazerges-Cousquer, Trait de procedure penale, *Economica*, 2009, n 987 p. 638. For example, construction without a permit is a continuing crime, so the statute does not begin until construction has been fully completed. See Cour de cassation, chambre criminelle, May 20, 1992, B. n 202, pourvoi n 90-87350 <http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000007065688&fastReqId=143409432&fastPos=1> (accessed April 1st, 2010).

[199] Tribunal de Grande Instance de Paris, ordonnance of November 2, 1998, *AJIL*. Vol.93. n3. July 1999.

[200] Cour de cassation, Chambre criminelle, September 19, 2006 pourvoi n06-83963 <http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000007075007&fastReqId=1924165478&fastPos=1>.

[201] International Convention for the Protection of All Persons from Enforced Disappearance adopted December 20, 2006, G.A. res. 61/177, U.N. Doc. A/Res/61/177 (2006) , art. 1. Haiti has signed but not ratified the Convention.

[202] United Nations Declaration on the Protection of all Persons from Enforced Disappearance, adopted December 18, 1992, G.A. res. 47/133 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/47/49 (1992), art. 17 1.

[203] United Nations Working Group on Enforced or Involuntary Disappearances, General Comment on Enforced Disappearance as a Continuous Crime, paras. 1, 6, and 7.

[204] UN Declaration on the Protection of all Persons from Enforced Disappearance, art. 14.

[205] Inter-American Court of Human Rights, Velsquez Rodriguez Case, Judgment of July 29, 1988, Inter-Am. Ct. H.R., (Ser. C) No. 4 (1988), para. 155; see also Inter-American Court of Human Rights, Heliodoro Portugal Case, Judgment of August 12, 2008., Inter-Am. Ct. H.R., (Ser. C) No. 186 (2008); Inter-American Court of Human Rights, Tiu Tojn Case, Judgment of November 26, 2008, Inter-Am. Ct. H.R., (Ser.C) No. 190 (2008).

[206] See *Case of Marco Antonio Monasterios Prez*, Supreme Court of Justice of the Venezuelan Bolivarian Republic, judgment of August 10, 2007; *Case of Vitela et al.*, Federal Criminal and Correctional Appeals Chamber of Argentina, judgment of September 9, 1999; *Case of Jos Carlos Trujillo*, Constitutional Court of Bolivia, judgment of November 12, 2001; *Case of Castillo Pez*, Constitutional Court of Per, judgment of March 18, 2004; *Case of Juan Carlos Blanco* and *Case of Gavasso et al.*, Supreme Court of Uruguay, judgments of October 18, 2002, and April 17, 2002.

[207] *Case of Jess Piedra de Ibarra Case*, Supreme Court of Justice of Mexico, judgment of November 5, 2003; Highest Court Authorizes Prosecution of 'Dirty War' Cases, Human Rights Watch news release, November 4, 2003, <http://www.hrw.org/en/news/2003/11/04/mexico-highest-court-authorizes-prosecution-dirty-war-cases>.

[208] See *Case of Caravana*, Criminal Chamber of the Supreme Court of Chile, judgment of July 20, 1999; *Case of the withdrawal of immunity from Pinochet*, Plenary of the Supreme Court of Chile, judgment of August 8, 2000; *Case of Sandoval*, Court of Appeal of Santiago, Chile, judgment of January 4, 2004.

[209] United Nations Office of the High Commissioner for Human Rights, OHCHR in Haiti (2008-2009), 2009, <http://www.ohchr.org/EN/Countries/LACRegion/Pages/HTSummary0809.aspx> (accessed March 21, 2011).

[210] Human Rights Watch, World Report 2011 (New York: Human Rights Watch, 2011), Haiti, <http://www.hrw.org/en/world-report-2011/haiti>.

[211] See Statement of Mr. Ren Magloire (Special Advisor to the President of Haiti, Legal Affairs, as an Individual), 40th Parliament of Canada, 3rd Session, Standing Committee on Foreign Affairs and International Development, Monday, March 7, 2011.

[212] Otherwise there is a real risk that a prosecution which is not sufficiently narrow may lead to a long and expensive process. Such was the case of the prosecution of Slobodan Milosevic before the International Criminal Tribunal for the former Yugoslavia, in which the accused died during the trial. See Human Rights Watch, *Weighing the Evidence: Lessons from the Slobodan Milosevic Trial*, vol. 18, no. 10(D), December 2006, <http://www.hrw.org/sites/default/files/reports/milosevic1206webcover.pdf>.

[213] In drawing the lessons from the Milosevic case, Human Rights Watch concluded that in the case of a high-ranking official who is not present at the crime scenes, the prosecution should from the outset ensure that adequate focus is given to evidence of the chain of command and not disproportionately to victims testimony from crime scenes, *ibid*.

[214] See Statement of Mr. Ren Magloire (Special Advisor to the President of Haiti, Legal Affairs, as an Individual) 40th Parliament of Canada, 3rd Session, Standing Committee on Foreign Affairs and International Development, Monday, March 7, 2011.

[215] UN Human Rights chief offers Haitian authorities assistance in Duvalier case, Office of the High Commissioner for Human Rights, Press Release, February 1, 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10696&LangID=E> (accessed March 21, 2011).

[216] Trenton Daniel, Professor, first lady and (maybe) president, *Miami Herald*, February 13, 2011, [http://www.miamiherald.com/2011/02/13/2062937\\_p2/professor-first-lady-and-maybe.html](http://www.miamiherald.com/2011/02/13/2062937_p2/professor-first-lady-and-maybe.html) (accessed April 1, 2011)

[217] Michel Martelly approves of the return of Duvalier (Michel Martelly approuve le retour de Duvalier), *Le Nouvelliste*, January 20, 2011, <http://www.lenouvelliste.com/article.php?PubID=&ArticleID=88050> (accessed March 21, 2011).

[218] Open letter to the President of the Republic, to the Prime Minister and to the Minister of Justice (Lettre ouverte au President de la Rpublique, au Premier Ministre et au Ministre de la Justice), *Le Nouvelliste*, February 14, 2011, <http://www.lenouvelliste.com/article.php?PubID=&ArticleID=89315> (accessed March 21, 2011).

[219] *Ibid*.

[220] See, Ordonnance, dated March 22, 2011, served on Duvalier March 24, 2011.

[221] UN Security Council, Report of the Secretary-General on the United Nations Stabilization Mission in Haiti, S/2011/183, March 24, 2011, para. 82.

[222] US Department of State Daily Press Briefing, January 18, 2011, <http://www.state.gov/r/pa/prs/dpb/2011/01/154747.htm> (accessed March 21, 2011).

[223] Human Rights Watch Interview with Michle Montas, March 16, 2011.

[224] UN Security Council, Report of the Secretary-General on the United Nations Stabilization Mission in Haiti, U.N. Doc S/2011/183, March 24, 2011, para. 82 .

[225] Konstitusyon se paye, bayonet se fe.

[226] For an extensive history, see Nancy Gordon Heintz and Robert Debts Heintz., *Written in Blood: the Story of the Haitian People, 1492-1995* (Boston: Houghton Mifflin, 1978).

[227] *Ibid*.

[228] Even now, people do not trust the justice system. Women who have been victims of sexual-based violence and have lived in informal displacement camps since January 2010 tell Human Rights Watch, when asked if they filed complaints with the police, there is no one here to take care of us. Only God watches over us. See Human Rights Watch Interview with resident of Champs-Mars camp, Port-au-Prince, Haiti, November 15, 2010.

[229] Partie civile is common in legal systems modeled on the French system. It allows a crime victim to file a complaint with the prosecutor, or directly with the court, and participate as a party in the case as it goes forward.

[230] The trial surrounding the April 1994 massacre in the Raboteau slum of Gonaives city is the only other comparable complex prosecution for human rights violations undertaken in Haiti. The most significant human rights trial in Haitian history resulted in the convictions of 53 officers and soldiers. Five years later, under an interim government, a court overturned those convictions in an internationally condemned ruling. For more information, see Institute for Democracy and Justice for Haiti, Justice for Haiti: The Raboteau Trial, undated, [http://ijdh.org/articles/article\\_justice-for-haiti\\_raboteau-trial.php](http://ijdh.org/articles/article_justice-for-haiti_raboteau-trial.php) (accessed April 1, 2011).

[231] Human Rights Watch Interview with Bobby Duval, March 17, 2011.

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