



**'YOU CANNOT
KILL THE TRUTH'**

THE CASE AGAINST
JEAN-CLAUDE DUVALIER

**AMNESTY
INTERNATIONAL**



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INTERNATIONAL



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Cover photo: Les Disparus De Fort-Dimanche, Haiti (1989). Through his art, Gérald Bloncourt works to honour the victims of the Duvalier dictatorship and keep their memory alive. A former activist, in 1946 he was forced into exile in France, where he has campaigned for justice for the victims of Jean-Claude Duvalier. © Gérald Bloncourt

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1. INTRODUCTION

“You cannot kill justice. You cannot kill the truth”

Jean L. Dominique, in *The Agronomist*.

The return of former president Jean-Claude Duvalier to Haiti in January 2011 confronted the Haitian state with its obligations under international law to investigate the crimes committed under his government, and prosecute those responsible. The systematic or widespread use of torture and enforced disappearance in Haiti between 1971 and 1986 constitute crimes against humanity. Neither the passage of time nor immunity from prosecution can be used as excuses for not investigating or prosecuting those responsible for such crimes, including Jean-Claude Duvalier himself.

Justice is a human right. For the past 25 years, truth, justice and reparation were unavailable to the survivors of Jean-Claude Duvalier's repressive regime. His return to Haiti stirred memories of suffering among many Haitians, not least the survivors of his infamous prisons at Casernes Dessalines, Fort Dimanche and the National Penitentiary. Less than 48 hours after his return, Jean-Claude Duvalier was indicted by the Haitian authorities for embezzlement and theft of public funds during his presidency. Victims of human rights violations and their relatives also came forward and filed complaints against the former president. As a result, Port-au-Prince's Public Prosecutor indicted Jean-Claude Duvalier for crimes against humanity, launching a criminal investigation. This bold decision by the Haitian authorities to prosecute a former head of state was welcomed by the national and international human rights community, who praised the Haitian authorities for attempting to end the ongoing impunity for crimes committed more than 25 years ago.¹

The quest for justice in Haiti will continue as long as victims of human rights violations have their right to justice denied. Revealing the truth, imparting justice and providing reparation to the victims are obligations on the Haitian state under international law. If there is sufficient admissible evidence, and if the prosecution succeeds in bringing Jean-Claude Duvalier to trial, it would be an enormous achievement in the global fight against impunity. In this respect, the international community shares the responsibility to ensure justice is carried out.

Amnesty International has gathered numerous reports of human rights violations perpetrated under Jean-Claude Duvalier's government between 22 April 1971 and 7 February 1986. Documents published by the organization during this period have been made public again and presented to Port-au-Prince's Public Prosecutor to help inform the investigation and demonstrate the widespread and systematic way in which these crimes were committed with total impunity, condoned or abetted by the head of state.²

This report reinforces Amnesty International's longstanding call for justice in Haiti. It

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describes the repressive system Jean-Claude Duvalier inherited from his father François Duvalier. Using archival documents produced by Amnesty International and other human rights organizations, it gives an understanding of the human rights violations perpetrated against the civilian population in Haiti. Finally, this report presents a series of recommendations aimed at ending the prevailing impunity for human rights-related crimes in Haiti, calling for victims to be awarded reparations and for guarantees and safeguards that will ensure individual accountability and justice and prevent such crimes being repeated in the future.

TIMELINE OF KEY EVENTS

September 1957

François Duvalier elected President of Haiti.

November 1962

François Duvalier issues a decree creating the National Security Volunteers (Volontaires de la Sécurité Nationale, VSN), giving formal status to the *tonton macoutes*, the armed militia created in the late 1950s that would become the main agents of political repression under the governments of both François and Jean-Claude Duvalier.

June 1964

Rigged constitutional referendum makes François Duvalier “President for Life”.

1965

Amnesty International founder and Secretary General, Peter Benenson, visits Haiti.

April 1969

Anti-communist Law passed, criminalizing all “communist activities”.

January 1971

A new Constitution grants the president authority to appoint his successor, who will also have a mandate for life.

April 1971

François Duvalier dies. His son, Jean-Claude Duvalier, becomes President of Haiti.

January 1973

United States Ambassador to Haiti, Clinton E. Knox, is kidnapped by an armed group demanding the Haitian government release political prisoners. Negotiations lead to the release of the Ambassador and 12 prisoners.

1973

Corps des Léopards (Leopard Corps) is created by Jean-Claude Duvalier as his personal security force with the aim of maintaining presidential power. During the 1980s, the Leopards would take over most of the country’s police functions.

September 1977

Following pressure from the US government, the Haitian authorities release 104 political prisoners. Haiti ratifies the American Convention on Human Rights.

August 1978

The Inter-American Commission on Human Rights conducts a visit to Haiti. It documents evidence of extrajudicial executions, inhumane prison conditions, arbitrary detention, torture and violations of due process and the rights to freedom of expression, assembly and association.

September 1979

Amendment to the Press Law provides 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 people’s culture.”

Sept-Dec 1980

Several hundred politically motivated detentions of journalists, trade unionists and those deemed to be political opponents take place. Many of those arrested are later expelled from Haiti.

1983

Abolition of the death penalty for political crimes. Constitution of 1983 re-establishes the President’s control of the VSN.

December 1983

Amnesty International research mission to Haiti. Amnesty International collects first-hand accounts of torture, incommunicado and arbitrary detention, and testimonies of extrajudicial executions and disappearances.

May 1984

Decree from Interior Ministry bans all political activities and groups except “those of the President”.

February 1986

Following protests throughout Haiti over rising food prices and pressure from the US government for him to leave office, Jean-Claude Duvalier resigns the presidency and goes into exile in France.

16 January 2011

Jean-Claude Duvalier returns to Haiti for the first time since he fled into exile.

18 January 2011

Jean-Claude Duvalier is detained by the Haitian authorities and charged with embezzlement and theft of public funds. A supplemental indictment is made accusing him of crimes against humanity committed under his government.

2. BACKGROUND

2.1. FROM FRANÇOIS DUVALIER TO JEAN-CLAUDE DUVALIER

In January 1971, three months before his death, President François Duvalier amended Haiti's Constitution, giving himself the right to designate his successor (Article 100).³ On 21 April 1971, at just 19 years old, his son Jean-Claude Duvalier was sworn in as "President-for-life".

It was expected that Jean-Claude Duvalier would take Haiti through a period of "liberalization", marking a departure from his father's relentless and arbitrary repression of political opponents. Haiti needed to change its international image from that of a repressive anti-communist stronghold. However, the liberalization never came. The government under Jean-Claude Duvalier continued to exert similar levels of repression against the population: civil and political rights were not respected; political prisoners and prisoners of conscience continued to be detained and held without charge or trial; torture in custody remained the norm; and disappearances and summary executions continued to be reported. The security forces and the paramilitary militia continued to commit human rights violations against the Haitian population with total impunity, despite the removal of some army and militia leadership in the capital Port-au-Prince and elsewhere.⁴

During Jean-Claude Duvalier's Presidency, the regime attracted less international criticism. He was seen as a young and inexperienced ruler, lacking a real interest or involvement in government. In this context, the existence of political prisoners and institutional violence seemed implausible. However, although the more sensational violence of François Duvalier's days was no longer apparent – scenes such as gun battles in Port-au-Prince or bodies tied to chairs lining the road to the airport – away from international attention the repression remained widespread and systematic.⁵

Jean-Claude Duvalier 'inherited' dozens, if not hundreds, of political prisoners arrested in the 1960s. By June 1973, the Haitian authorities had named 132 prisoners who they said had been pardoned during amnesties. However, many of those on the amnesty list had already been freed before Jean-Claude Duvalier took office, or were never seen again following their supposed 'release'.

Haiti's prisons and torture centres continued to claim the lives of hundreds of victims throughout Jean-Claude Duvalier's presidency. In the mid-1970s, Haitian dissidents and pro-democracy activists reported that the state-sponsored repression of François Duvalier's regime was continuing under his son.⁶ Arbitrary arrests, torture, deaths in custody, disappearances and political killings continued to be reported, although from 1977 the victims of human rights violations appear to have been chosen more selectively. Haitian authorities singled out political leaders, journalists, trade unionists and those suspected of being opponents of the government. Illegal detention continued. Detainees were kept incommunicado for long periods of time and were frequently subjected to torture and ill-treatment. The judiciary intervened only in the very few cases where detentions received wide international publicity. The security forces and militia continued to operate outside the law with impunity. Human rights abuses went unacknowledged by the authorities and relatives

and friends never received any explanation of what had happened to their loved ones.

Meanwhile, reports of human rights violations in Haiti rarely registered internationally. Several factors have been associated with the decrease in the number of reports of human rights violations. US President Jimmy Carter's commitment to human rights as "the soul of [US] foreign policy" may have put pressure on Jean-Claude Duvalier and his government to improve Haiti's human rights record. Haiti needed to change its image at the international level, and it is in within this context that Haiti ratified the American Convention on Human Rights in September 1977 and invited the Inter-American Commission on Human Rights to conduct a visit to Haiti in August 1978.

For many years, hardly any information about political prisoners seeped out of Haiti. Prisoners who were released or exiled did not dare to speak out for fear of reprisals against themselves or their family members still living in Haiti. In this context, the term political prisoner must be interpreted in the widest possible sense. A large number of people were imprisoned despite carrying out no political activity whatsoever, due to technical mistakes, as a result of personal grudges, or for very minor offences. In most cases there were no judicial proceedings of any kind, and torture continued to be used routinely against detainees.

During his 15-year presidency, Jean-Claude Duvalier relied on the system and apparatus of state repression that his father had put in place; the same detention centres, security forces, militia, ineffective judiciary and climate of impunity. However, under François Duvalier the repression was carried out openly, with complete disregard for human life and dignity and with no attempt to disguise the violations. Under Jean-Claude Duvalier the repression became more selective, systematic and secretive, but the same methods, and to a large extent the same actors, continued to be employed.

2.2. THE APPARATUS OF STATE REPRESSION

All sectors of Haitian society were caught in the mechanism of state repression. Military officers, government officials and militia members used the political arguments underlying Haiti's state-sponsored repression to disguise personal vendettas, acquire or maintain personal power and grab land or properties across Haiti.

2.2.1. THE HAITIAN ARMED FORCES

The Haitian Armed Forces (*Forces Armées d'Haïti*, FADH) were the backbone of the Haitian government and state repression. For decades the FADH was the only state institution with a presence across most of the country. During the government of Jean-Claude Duvalier, the FADH was assessed as being 9,000-strong, with 4,000 personnel based in Port-au-Prince. It performed general law-enforcement and public security functions; however, specialized units had more specific tasks in relation to keeping the government's opponents in check. The FADH had control over Haiti's prisons, as well as over the country's ill-trained and badly equipped police force.

2.2.2. THE LEOPARDS CORPS

The *Corps des Léopards* (Leopard Corps) was created by Jean-Claude Duvalier in 1973 as his personal security force, with the aim of maintaining presidential power and restricting the influence of the other branches of the FADH as a means to prevent military coups. It was an elite force comprising between 600 and 800 officers, trained in counter-insurgency tactics

by US military personnel. The Leopards were headed by Himmler Rébu but remained under the direct control of Jean-Claude Duvalier. During the 1980s, the Leopards took over most police functions and intervened in most domestic state matters.⁷

2.2.3. THE PRESIDENTIAL GUARD

The presidential guard reported directly to Jean-Claude Duvalier and was approximately 600-strong. In addition to guarding the president, it surveyed the rest of the army and reported any sign of disloyalty to the president.

2.2.4. THE MILITARY POLICE

The military police was part of the FADH and performed general surveillance functions and record-keeping of the Haitian population. It was directly supervised by the FADH headquarters.

2.2.5. THE RURAL POLICE

The rural police was a centralized force deployed in rural areas. It came under the direct command of the *Chefs de Section* (Section Chiefs), who enforced the law in rural areas.

2.2.6. NATIONAL SECURITY VOLUNTEERS (TONTON MACOUTES)

The Creole words, *tonton macoutes* (“bogeymen”) were used throughout Haiti to refer to the *Volontaires de la Sécurité Nationale* (National Security Volunteers, VSN), an armed militia responsible directly to the president, whose members were reported to be the main agents of political repression.

Established by François Duvalier in the wake of two brutally suppressed invasions in the late 1950s, this volunteer militia soon took on many of the tasks of the army and police force. Until 1962, despite its widespread activity, it had no legal existence. However, in November 1962 François Duvalier issued a decree formally creating the VSN. This stated that members were directly responsible to the president, unsalaried, trained by army officers but not part of the armed forces, and could carry arms. The 1971 and 1983 constitutions re-established the president's command of the VSN.

VSN activities from 1958 to 1977 were characterized by their extreme brutality. During the 14 years of François Duvalier's presidency and the first six years of his son's government, thousands of Haitians were killed, tortured, arbitrarily imprisoned or forcibly disappeared. Incidents such as the massacre by the VSN of hundreds of people in the city of Jérémie (Grand'Anse department) in 1964 have not been forgotten. By 1977, after 20 years of VSN repression, political opposition, trade unions, student organizations and the independent press had all but disappeared.

Over the years, there were reports that the VSN was to be reformed or disbanded. However, the VSN was still much in evidence throughout Haiti in the 1980s. In the mid 1980s, there were an estimated 9,000 tonton macoutes. Members of the local and national government, including ministers, mayors and section chiefs, were also VSN members.

UNLIMITED POWER

National Security Volunteers enjoyed virtually unlimited power in Haiti, particularly in rural communities where they were to some extent the only link with the authorities in Port-au-Prince.

"If it is a VSN who put me in prison, he can release me when he wants to, that is the problem... If he wishes to keep me in for three months, he keeps me in for three months; if he wishes to keep me in for two months, he keeps me in for two months, just like that."

Testimony given to Amnesty International from a former prisoner detained in 1980.

In December 1975, a denunciation of the atrocities committed by tonton macoutes was published in *Le Petit Samedi Soir* weekly newspaper in the form of an open letter to the president. The letter was signed by 32 citizens from Galette Potonier (Les Irois Commune, Grand'Anse department) and it described some of the atrocities inflicted by the VSN on the local population.

THE VSN DO EVERYTHING ARBITRARILY...

"Since their [the VSN's] existence, this zone has become a human slaughterhouse. The abuses that have been perpetrated there cannot be enumerated. The people have been spoiled even of their lowly means of subsistence, often beaten to a bloody pulp, without any recourse to and explanation from the militiamen of the area. They do everything arbitrarily..."

Torture was awaiting the thief. The so-called agents of the peace inflicted on him a horrible treatment: the poor man was bludgeoned; they enjoyed pummeling his stomach with a cudgel, hitting him in the ribs. Besides wounds here and there, fractures on the spinal column were observed, and the poor man succumbed in excruciating pain on November 4, at 8pm in public view. All this happened because he had not what it takes to buy his freedom."⁸

Le Petit Samedi Soir, December 1975.

The year 1977 saw some change; repression of suspected opponents became more selective, but was still part of Haiti's landscape. In the early 1980s, the VSN concentrated their efforts on close surveillance and arbitrary arrests.

2.2.7. FORT DIMANCHE

Fort Dimanche was an army base in the northern outskirts of Port-au-Prince near La Saline, which contained a prison for political detainees. Under François Duvalier, political prisoners were held for years in incommunicado detention in Fort Dimanche, without trial or the possibility of challenging their arrest and imprisonment.

PRISON CONDITIONS IN FORT DIMANCHE

Testimony from a former political prisoner released in exchange for the kidnapped US Ambassador (January 1973).

"Individual cells were normally seven feet long, seven feet high and three feet wide. Some of them were mere 'cubby holes' in which the prisoner can stretch out or curl but cannot stand upright. Communal cells are three meters by three meters and sometimes held up to 15 prisoners. They had to take turns to sleep, squatting or standing. There was no form of ventilation in the cell and daylight cannot get in. A harsh electric light burns day and night so that many prisoners suffer with their eyesight. In addition, it is impossible to take any form of physical exercise. They have no way of getting out to the open spaces to breathe in fresh air and enjoy the sunlight. The cell door is opened twice daily: at 3 o'clock in the morning for a torture bath – a bucket of cold water thrown over the body – and when the jailer unbolts the door to bring in the meagre food ration."⁹

The reputation of Fort Dimanche under both François and Jean-Claude Duvalier was of a place where prisoners went in but the majority came out dead or were never heard of again. Not only were political prisoners kept in inhumane and degrading conditions; extrajudicial executions also took place there. In 1979, after a visit to Haiti, the Inter-American Commission on Human Rights reported the names of 17 prisoners summarily executed in Fort Dimanche on 7 August 1974 and in March 1976.

EXTRAJUDICIAL EXECUTIONS IN FORT DIMANCHE

Emmanuel Joseph, former member of the Leopards and detained in Fort Dimanche gave this testimony.¹⁰

"Often at night we would hear the 'death squad' pass. That's the name we gave to comrades that never came back. The lugubrious sound of the murderous bullets reached us in the cells. Some cried in silence, some cried for the souls of those patriots killed for nothing".

2.2.8. CASERNES DESSALINES AND SERVICE DETECTIF

The *Service Détectif* (SD) was Duvalier's political police service. It operated from the Casernes Dessalines army barracks adjacent to the Presidential Palace. In the late 1970s, the SD was under the command of the Port-au-Prince police chief, Col. Jean Valmé. The SD was responsible for the detention and interrogation of those alleged to have committed political crimes. It was staffed with approximately 200 officers. All those suspected of political offences were first taken to Casernes Dessalines for interrogation and then transferred to Fort Dimanche, which was also under Jean Valmé's authority. Prisoners transferred to Fort Dimanche remained at all times under the 'jurisdiction' of the SD.

Prisoners of the SD were kept incommunicado and faced long periods of solitary confinement, interrupted only by interrogation sessions. One of 12 prisoners released in January 1973 described spending seven months in solitary confinement in Casernes Dessalines.

"The prison at the Casernes is made of a square block with a corridor in the middle. On each side there are five individual cells. Each cell measures six feet long by three feet wide. When arriving at Casernes, the prisoner is undressed and is left naked in the cell where there is only an old dirty mattress... It is only after a long sojourn that you are allowed to take a bath or cut your hair. In my case, I had to wait seven months before washing myself and having my hair cut at the Casernes Dessalines.

"In reality, at Casernes Dessalines I have never been tortured: I was interrogated and spent a long time in the cell. Then I was transferred to Fort Dimanche"

However, torture and cruel, inhuman or degrading treatment were carried out during the interrogation of some prisoners at Casernes Dessalines. The "jack" was often mentioned in prisoners' testimonies as one form of torture commonly practiced on men and women alike.

"They order me to stand up. The chief asks me if I am a communist. I answer negatively. Two men surround me. Suddenly, they slap me and break one of my teeth. After slapping me, they get hold of me and tie me up, they grab their whips and they whip me with all their strength. After the first torturer stops whipping me, the second says: 'In an instant, I'm going to make you admit that you are a communist. Let's 'djack' her then'. They grab their sticks, their ropes and they 'djack' me, and they start to hit me again. After having beaten me, they untied me and I fell on the ground."

2.2.9. POLICE HEADQUARTERS AND RECHERCHES CRIMINELLES

The *Recherches Criminelles* (Criminal Investigations Unit) was located in the main police station in Port-au-Prince.¹¹ An unofficial detention centre operated there and most of the individuals who transited through this centre were alleged common criminals or deportees from the United States, Bahamas or other countries. The detention conditions at Recherches Criminelles were said to be worse than those at Fort Dimanche, characterized by a stricter regime and long periods of solitary confinement.

According to reports, torture of detainees was commonly practiced at Recherches Criminelles, and the fate of several individuals taken there has never been established. According to former prisoners, summary executions were also common at Recherches Criminelles.

EXTRAJUDICIAL EXECUTIONS AT RECHERCHES CRIMINELLES

Sworn testimony given by a former military officer and prisoner at National Penitentiary from January 1981-July 1982.

"While I was imprisoned at the National Penitentiary, at least one hundred fifty (150) persons were executed. Persons to be executed were taken to Recherches Criminelles, along with some others. For example, fifteen (15) persons would be taken to Recherches Criminelles and only five (5) persons would return. I talked to those who returned about the others, and they would tell me and the others who asked that the prisoners who had not returned had been killed. Often, the manner of execution was apparently as follows. The prisoner would be strangled and killed at Recherches Criminelles by the use of a special cloth designed or used for this purpose, a strong cloth wrapped around the victim's neck, according to the persons who returned. (I was also told this by a 'Majore Prison' transferred from Recherches Criminelles to the National Penitentiary.) The body would be put in a car, and the car would be taken at night into an area of Port-au-Prince where there were a lot of thieves, and then the body, after having been shot, would be dumped out of the car. The intention was to make it appear that the murdered persons had been thieves."

2.2.10. NATIONAL PENITENTIARY

The National Penitentiary (Pénitencier National) is Haiti's main civil prison. During Jean-Claude Duvalier's presidency, numerous political prisoners were detained there without charge or trial alongside common criminals for months or years at a time. The prison regime was reported to be less harsh than Fort Dimanche or Casernes Dessalines; however, ill-treatment of prisoners was common. The National Penitentiary had a serious overcrowding problem. Some prisoners stated that they were forced to share a cell of 12 feet by 12 feet with 40 or 50 other prisoners. Political prisoners are reported to have died there due to lack of medical treatment. According to prisoner testimonies, "there was an entirely secret part of the prison, a sort of prison within a prison... We didn't know what occurred in that part of the prison, in which there were the small 'cachot' [cells]."¹²

3. HUMAN RIGHTS VIOLATIONS UNDER JEAN-CLAUDE DUVALIER

Human rights violations against political detainees in Haiti typically began with the victim being arbitrarily arrested and then subjected to long-term incommunicado detention without charge or trial. The detention of individuals in this way was generally unacknowledged by the authorities, except on the rare occasions when an individual was released under a presidential amnesty, and their name published.

When people are deprived of their liberty in arbitrary and incommunicado detention, at the discretion of the detaining law enforcement officials, they are without adequate protection against torture or other ill-treatment and are outside of the protection of the law. This makes it more likely that they will be subjected to torture or other cruel, inhuman and degrading treatment, extrajudicial execution or enforced disappearance.

LONG-TERM DETENTION WITHOUT CHARGE OR TRIAL

Bienvenue Théodore, an army sergeant, was arrested in July or August 1979 under the accusation of treachery and plotting against the government. He was reportedly denounced by one of his subordinates whom he had rebuked for saying that he wanted to shoot all strikers during a labour dispute. In 1980, in response to Amnesty International's inquiries, the government denied that he was being detained. However, in 1982, former prisoners reported seeing him imprisoned in the National Penitentiary.¹³

Jocelyn Bochard was arrested on 16 November 1979 after he had allegedly been in contact with a political leader in exile. He spent five months in solitary confinement in a dark cell in Casernes Dessalines where he was reportedly badly beaten. Later, he was transferred to the National Penitentiary.

Eric Alcindor, a marine, was arrested in August 1979 in possession of an opposition newspaper. He was held in solitary confinement in the Casernes Dessalines for two years before being transferred to the National Penitentiary.

Amnesty International adopted Bienvenue Théodore, Jocely Bochard and Eric Alcindor as prisoners of conscience. They were released as part of the April 1985 presidential amnesty.

3.1. TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT

Torture and other cruel, inhuman and degrading treatment is a violation of international law. During Jean-Claude Duvalier's presidency, torture was used widely and systematically to extract confessions, to punish and to instil fear. Most of the information collected by Amnesty International concerning the torture and ill-treatment of detainees comes from the survivors themselves, or in the form of testimonies from fellow prisoners, who saw the marks and injuries of torture on the victims' bodies.

Victims were tortured in prison and during arbitrary detention in military barracks and police stations. Most testimonies available to Amnesty International mention torture being carried out at the Casernes Dessalines, the military barracks in Port-au-Prince, Fort Dimanche and the National Penitentiary. Other reports of torture and ill-treatment mention barracks or police stations in other parts of Haiti, including the town of Cayes in the southern part of the country, Croix des Bouquets on the outskirts of Port-au-Prince, and Hinche in the Central Department.



Representation of the torture method known as the 'jack', based on a lithograph reproducing a drawing from Jean Baptiste Debret, "Feitours corrigeant des nègres", in *Voyage Pittoresque et historique au Brésil*, Tome II, plate 25, page 82, c. 1835. Public domain.

Furthermore, Amnesty International has received credible information from various independent sources that Chefs de Section and local police chiefs ran small detention centres, sometimes even in their own homes, where ill-treatment allegedly took place. Methods of torture described in testimonies received by Amnesty International include beatings on the head or other parts of the body with sticks, forcing detainees to remain standing still for very long periods, and detainees being tied in the position known as the "pau de arara", parrot's perch, or the "jack".¹⁴

In the case of political prisoners arrested by the Service Détectif, these detainees were held incommunicado without access to family, lawyers or doctors, and systematically interrogated. Such

circumstances made it easier for torture to go ahead unchecked and unpunished.

Torture can occur more easily where legal, judicial or administrative remedies are ineffective or unavailable. Often this means there is no chance of punishment for the officials responsible. Officials in Haiti used torture and ill-treatment believing that they would not be held accountable for their actions, often arguing that they were following orders from their superiors.

TORTURE AT FORT DIMANCHE

Sworn statement given by JM in Washington, D.C., 1980.

"On March 17, 1977, I was arrested near my house in Port-au-Prince by five Ton Ton Macoutes in their blue denim uniforms. No reason was ever given for my arrest or detention and I was never formally charged. I was taken directly to Fort Dimanche in handcuffs.

Immediately on arriving at Fort Dimanche political prison, I was taken to an interrogation room. They began to beat me because they said I had been talking badly about the government. They just kept beating me with their fists that had rings on, with clubs and with kicks from their feet. Blood started pouring out of my mouth and ears and I lost consciousness several times. The second time that I woke up I saw some of my teeth in a pool of blood on the floor. This beating was so bad that for many months after I couldn't see out of my right eye and had a total loss of hearing in one of my ears. My whole face was completely swollen from the beating. They stopped beating when I lost consciousness the last time, I couldn't take any more. I never was allowed to see a doctor in the two years that I was at Fort Dimanche.

I spent seven months totally alone in a small cell without any window... After about seven months alone in this cell, they brought seven other prisoners. Amongst them was a deportee from the United States... Another of the occupants of the cell, Jacques, came in a very weakened condition and soon got very sick... I think that he was dying of tuberculosis. One day they came to get him and I never heard of him again. All the other six people who were brought into my cell at this time had been very badly beaten, just like I had... I should add that when FJ, the returnee, was brought to the cell he had been so badly beaten that you couldn't see his eyes, and his face was totally disfigured.

After 24 months in Fort Dimanche I was released. They never charged me or gave me any explanation for the treatment that they gave me."

In the majority of the cases brought to the attention of Amnesty International, members of the Service Défectif at Casernes Dessalines tortured detainees to obtain information about their political activities and to force them to denounce other suspected opponents of the government. Amnesty International is not aware of a single instance in which a complaint made by a detainee about torture or ill-treatment was investigated by the Haitian authorities.¹⁵

YVES RICHARD, ARBITRARILY ARRESTED, TORTURED AND DEPORTED

Yves Richard was the Secretary General of the Autonomous Confederation of Haitian Workers (Centrale Autonome des Travailleurs Haïtiens, CATH). He was arrested on 22 December 1980 for alleged "political and subversive activities".¹⁶

*"I was arrested without warrant at 10 o'clock in the morning during a meeting I was holding at the office of the well-respected Salesian fathers with 35 exploited workers from the company DESDAN. Without warning, a group of tonton macoutes burst in, and, without more ado, started beating up the workers. Fellow trade unionist Siméon Jean-Baptiste was killed by a bullet from the guns of the tonton macoutes of Jean-Claude Duvalier. I was taken with the other workers to Casernes Dessalines where we were interrogated under torture and accused for the first time of being arsonists and communist agitators. From that moment, I was kept completely separate from the other workers and transferred to the underground cells hidden below the National Palace, where there is no daylight. Thanks to the electric torch of the prison guard, however, I was able to distinguish skeletons, probably those of former prisoners, lying there on the ground. It was like living a nightmare inside a mass grave under the National Palace."*¹⁷

Yves Richard was released and deported to Curaçao.

During the Duvaliers' regimes, most opposition lawyers, journalists and intellectuals were either imprisoned or expelled from Haiti. Human rights activists were forced to suspend their work documenting and disseminating information about abuses of human rights in Haiti. This made it difficult to obtain information about torture and ill-treatment in the country. However, testimonies received from former detainees or their families, and from ex-members of the Haitian army or security forces who have sought asylum in other countries, portray a disturbing picture of continued use of torture and other forms of ill-treatment of prisoners in Haiti throughout Jean-Claude Duvalier's regime.¹⁸

Throughout the 1970s and 1980s, Amnesty International made frequent appeals on behalf of people arrested in circumstances in which the organization believed they were in danger of being tortured. However, no substantive response has ever been received from the Haitian government in relation to these cases. The head of state and judicial authorities showed no willingness to confront the practice and investigate or prevent it, despite torture being criminalized under Haitian law.

Haiti's Penal Code, in force during Jean-Claude Duvalier's regime, criminalized acts of torture during detention or arrest: Article 302. "If [the person arrested, detained or kidnapped] was submitted to physical torture, the culprit shall be punished by death."¹⁹

THE 'JACK' AT CASERNES DESSALINES

Turneb Delpé, a surgeon and founding member of the National Progressive Democratic Party of Haiti (Parti National Démocratique Progressiste Haïtien, PNDPH) was arrested in the early hours of 1 November 1984 in Port-de-Paix, along with Estève René, Joseph Mirtilien, Jean Paul Duperval and Paulux St-Jean. The police officers who arrested them in the street did not have an arrest warrant. They were not informed of the reason for their arrest.²⁰

Turneb Delpé was brought to Casernes Dessalines in Port-au-Prince where he remained until late December 1984, when he was transferred to the National Penitentiary. He was eventually released on 30 April 1985. At Casernes Dessalines he was held incommunicado in an underground cell of 14 feet by four feet. He was in complete isolation except for daily exchanges with officials during the distribution of meals.

"At Casernes Dessalines, the personnel harassed us continuously: verbally, threats of cudgelling ("bastonnade"). Every refusal to submit was followed by a cudgelling. I was interrogated 43 times by the Chief of Police, the Ministers of State and Interior, and national defence, by the chief of the National Palace Security and members of the National Commission of Investigation (military personnel). The interrogation related to the following aspects: social and political activities in Haiti, political opinions and allegiance, biographical aspects, military knowledge, armed insurrection, the PNDPH and its central committee, their names".

At Casernes Dessalines, Turneb Delpé was subjected to torture because he "refused to answer certain questions", and told: "They promise not to beat you any more if you collaborate with them". He was subjected to several forms of physical torture, including beatings, slaps, and the "jack" in which the prisoner's arms and feet are tied, the bound arms are pinned between the legs, and the four limbs are then locked by a transversal stick behind the knees and inside the elbows, leaving the individual in a crouching position with a round back. In this position, "they let you roll on the ground and they beat you with a bat on the buttocks, the thighs and the back." Psychological torture included "death threats, isolation, humiliation, deprivation of all essentials, i.e. clothing, water, tooth brush; sudden wake ups during the night and complete nakedness."

Turneb Delpé was accused of "plotting against state security"; however, he was not brought to trial. He was released on 30 April 1985 during a general amnesty granted by Jean-Claude Duvalier and was allowed to leave Haiti for the United States.

3.2. ENFORCED DISAPPEARANCES

Throughout the fifteen years of Jean-Claude Duvalier's rule, making people 'disappear' became one of the commonest methods of government repression.

The International Convention for the Protection of All Persons from Enforced Disappearance (Convention against Enforced Disappearance), to which Haiti has been a signatory since 2007, defines enforced disappearance 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.*"²¹

Article 17 of the 1993 Declaration on the Protection of All Persons from Enforced Disappearances issued by the United Nations General Assembly stipulates that any act "*constituting enforced disappearance shall be considered a permanent or continuous offence as long as the perpetrators continue to conceal the fate and the whereabouts of the persons who have disappeared and these facts have not been clarified.*"

JOSEPH PARDOVANY, 'DISAPPEARED' SINCE 1983

Joseph Pardovany, a mechanic and father of five, was detained on 8/9 September 1983 in Port-au-Prince, presumably because of his connection with Sylvio Claude, the leader of the Haitian Christian Democratic Party (Parti Démocrate Chrétien Haïtien, PDCH). The detention of Joseph Pardovany went unacknowledged by the Haitian authorities. In early 1984, Amnesty International received reports of his detention at Casernes Dessalines. However, during the April 1985 amnesty declared by Jean-Claude Duvalier, Joseph Pardovany was not among the 37 political prisoners released. His whereabouts are still unknown.

Enforced disappearances by state agents were among the most shocking human rights violations to occur during the 15 years of Jean-Claude Duvalier's rule; shocking both because of the scale on which they took place in the small republic, and because of the cruelty and longevity of this crime.



DISAPPEARED

ROCK CHARLES DEROSE (a.k.a. Jérôme Jean), a 41-year-old mechanic, was arrested on 12 November 1981 during a raid on his home in Port-au-Prince. He was a member of the Parti Unifié des Communistes Haïtiens (Unified Party of Haitian Communists, PUCH). Communist activities had been criminalized in Haiti since 1969. He was held in the Casernes Dessalines where he was reportedly tortured. The government refused to acknowledge his detention; however, Amnesty International received eye-witness reports that he was being detained, and that he was one of several prisoners who had been taken by the

authorities to unknown destinations. At the time of his arrest Rock Charles Deroose was reportedly trying to set up a trade union at the factory where he worked. He had previously been detained in October 1960 and held for three months after participating in a meeting of the Fédération des Étudiants Haïtiens (Federation of Haitian Students).



ARBITRARILY DETAINED AND TORTURED

JOSEPH LAFONTANT, a lawyer and the General Secretary of the Ligue Haïtienne des Droits Humains (Haitian Human Rights League), was arrested on 28 November 1980. He had defended several Amnesty International adopted prisoners of conscience during their trial in August 1980 when they were sentenced to nine years' imprisonment. He was leaving the Law Courts in Port-au-Prince where he was attempting to represent 60 workers from the national brewery who were under threat of

arrest, when he was forcibly detained by five men in civilian clothes. He was reported to have been severely tortured before being released in December 1980. Joseph Lafontant was killed in 1988.



DISAPPEARED

JEAN LALANE was arrested on 9 September 1983 during a raid on his home in Port-au-Prince. He was one of several members of the Parti Démocrate Chrétien d'Haïti (PDCH) arrested that day, including Mères Briole. His son Aubet Lalane was also arrested at the same time and held for three months in Casernes Dessalines before being released. An ex-prisoner said that Jean Lalane was one of three prisoners he saw being taken hooded from their cells in the Casernes Dessalines in March 1984.



ARBITRARILY DETAINED AND TORTURED

GÉRARD DUCLERVILLE, a Catholic lay activist, was arrested on 28 December 1982. During his detention he was interrogated about his regular radio programme Messe du Matin (Morning Mass) on Radio Cacique. He was released without charge on 7 February 1983. His torture by

the police left him needing hospital treatment, including skin grafts. He told Amnesty International "they jacked me up and started raining blows on me with a baton ... I must have been hit 70 times with the baton. At some point I felt it was too much for me and I couldn't stand any more. I said to them 'You guys, instead of torturing me like that, it would be better if you just killed me and get it over with...'" He was named a prisoner of conscience by Amnesty International.



DISAPPEARED

WILLIAM JOSMA, an engineer, was reportedly detained by members of the security forces in Carrefour, Port-au-Prince on 3 April 1981. He had been a candidate for the municipality of Moron in Jérémie Province in the 1979 legislative

elections but was among those forced by the government to withdraw. After being held for two weeks at the Casernes Dessalines, he was transferred to the National Penitentiary where he was held in incommunicado detention until January 1982. Fellow prisoners claimed they saw him being removed from the National Penitentiary in January 1982 to an unknown destination, apparently on the grounds that he had knowledge of a failed invasion attempt by Haitian exiles that had taken place earlier that month. In an official communication to Amnesty International in February 1984, the Haitian authorities acknowledged that he was in detention accused of being a terrorist. However, further information as to his whereabouts or health were never given. He was adopted as a prisoner of conscience by Amnesty International.



ARBITRARILY DETAINED

GRÉGOIRE EUGÈNE, founder of the Parti Social Chrétien Haïtien (Haitian Christian Social Party, PSCH), and publisher of the magazine Fraternité was arrested by the police at his home and taken to the Casernes Dessalines in Port-au-Prince on 18 June 1984.

Copies of the latest edition of Fraternité were confiscated, as were his car and printing equipment. Grégoire Eugène was released the following day, but placed under house arrest until September. A month before his arrest the Ministry of Interior had issued a decree banning all political activities and groups except "those of the President".



ARBITRARILY DETAINED AND TORTURED

EVANS PAUL, a journalist with independent Radio Cacique was arrested on 16 October 1980 at Port-au-Prince airport. He was returning from New York where he had interviewed the exiled former Haitian president Paul Eugène Magloire. He was held incommunicado in the

Casernes Dessalines for 10 days before being released without charge. The judge who ordered his release told him that the reason for his detention had been “because of your broadcasts on the radio: they are subversive”. Evans Paul recounted his ordeal to Amnesty International: “several people with sticks ... gave me a severe beating. A man ... pushed a long stick behind my legs and arms. I was like a ball. I felt as my body was going to break everywhere. At that point I was beaten with sticks. At one point I felt as though I were going to die. They gave me something to drink. Then they started again even worse. The skin on my buttocks had been torn away. The blood was running down. They weren’t put off. On the contrary, you could say that the sight of my blood excited them even more. When I was on the point of dying, they untied me and dragged me to a dark cell. You couldn’t see anything.”



ARBITRARILY DETAINED AND TORTURED

JOCELYN BOCHARD was arrested on 16 November 1979 after alleged contact with a political leader in exile. He spent five months in solitary confinement in a dark cell in Casernes Dessalines where he was also reportedly badly beaten. He was later transferred to the National Penitentiary. Jocelyn Bochard was named a prisoner of conscience by Amnesty International. He was

released in April 1985 following a presidential amnesty for political prisoners having spent nearly six years in prison without ever being charged.



DISAPPEARED

JOSEPH BIEN-AIMÉ, a widower in his fifties with eight children, was arrested at home on 13 May 1983. He was a member of the Parti Démocrate Chrétien Haïtien (Haitian Christian Democrat Party, PDCH), and had been previously detained from 29 September 1979 to 31 December 1981. Speaking in 1986, one of his daughters told Amnesty International that the day after his arrest she went to police headquarters where she was told that

her father had been taken to the Casernes Dessalines. “Since then, my father has “disappeared”. Until now we have no further news of him. We have neither father nor mother. There are eight of us children left in the house. We have no one to help us, to pay for food, schooling, nothing at all.”



ARBITRARILY DETAINED

70-year-old **FRANK BLAISE** was arrested without warrant on 25 August 1983 at Petit-Goâve, two months after returning to Haiti after having lived in the United States for approximately 15 years. He was taken by uniformed police to the Casernes Dessalines, and after a superficial interrogation was

taken to a dark, dirty and damp cell where he was kept in solitary confinement, dressed only in underpants, until 19 November, when he was released without any explanation. Frank Blaise described the poor conditions, deficient diet and lack of medical attention in the Casernes Dessalines. He was not given an explanation for his arbitrary arrest but Frank Blaise told Amnesty International that he believed it may have been due to his previous role as an agronomist working to improve the situation of rural workers and a book he had written about agrarian reform in Haiti.



ARBITRARILY DETAINED AND TORTURED

SYLVIO CLAUDE, a pastor and member of the political opposition, was detained on several occasions between 1979 and 1983. On 22 February 1979 he and a friend were detained by a group of tontons macoutes at his home in Mirebalais (Central Department). According to eyewitness reports, they were both handcuffed and severely beaten and were taken to the

Casernes Dessalines. There he was beaten and given electric shocks to the soles of his feet. He was then put on an aircraft and deported to Colombia. He returned to Haiti a few months later, and in July 1979 he announced the formation of the Haitian Christian Democrat Party. On 30 August 1979 he was arrested and held in Casernes Dessalines and later transferred to the National Penitentiary, where he was charged with “subversive activities”. He was released on 30 April 1980, only to be rearrested in mid-October of the same year as part of a new wave of repression in Haiti. In August 1981, he and 25 co-defendants were found guilty of arson and of plotting against internal state security; 22 of them, including Sylvio Claude, were sentenced to 15 years’ imprisonment with hard labour. Following a successful appeal and a re-trial the sentence was reduced to six years in August 1982. International observers stated that both the original trial and the re-trial did not conform to internationally recognized standards. They received a presidential pardon in September 1982 and were released. Sylvio Claude was detained for two days in December 1982 and again in October 1983 when he was held for 77 days without charge at the Casernes Dessalines. He was considered a prisoner of conscience by Amnesty International. Sylvio Claude was killed on 30 September 1991.



DISAPPEARED

MÈRÈS BRIOLE, a member of the National Security Volunteers, and supporter of the Parti Démocrate Chrétien Haïtien (Haitian Christian Democrat Party, PDCH), was reportedly arrested on 9 September 1983 in Port-au-Prince, together with several other PDCH members, some of whom were subsequently released.

Mères Briole is said to have had his cheque book with him when he was detained and to have been taken by security forces to a bank, where he was forced to withdraw \$1800 and hand it over to them. Some sources say that he was then taken to Croix des Bouquets army barracks and shot dead two days after his arrest. However, another report received by Amnesty International indicated that a fellow prisoner saw Mères Briole and two other prisoners (Jean Lalane and Joseph Pardovany) being taken from their cells in Casernes Dessalines with their heads covered in March 1984.

Enforced disappearances cause particular agony for relatives of the victims. They are unable to determine whether the victim is dead or alive and are therefore unable to grieve or resolve legal and practical matters. For them, the enforced disappearance continues without end, and for this reason it is considered a "continuous" crime.²²

In some cases of enforced disappearance, the body of the victim is eventually discovered, sometimes following an investigation. In most cases, however, it is assumed after a certain period of time that the person or groups of persons have been killed and their remains have been concealed to prevent perpetrators being brought to account.

Enforced disappearance was used in Haiti to eliminate political opponents, trade unionists, human rights defenders and other people considered a threat to the power or interests of the state. In 1986, Amnesty International called on the Haitian authorities to investigate the disappearance of hundreds of Haitians during the 1970s and 1980s.²³ Today, these cases remain shrouded in total impunity and in many cases the relatives of the disappeared still do not know what happened to their loved ones.

During the governments of both François and Jean-Claude Duvalier, the area known as Titanyen, in the northerly outskirts of Port-au-Prince, was renowned as a hiding-place for the remains of several political opponents, abducted and then executed on site. Based on accounts from former political prisoners, unmarked graves in the yard of Fort Dimanche contained also the remains of prisoners.

Two victims of enforced disappearance reported by Amnesty International were Jacques Emmanuel Bonheur and Augustin Auguste, members of the Haitian Christian Democratic Party (*Parti Démocrate Chrétien Haïtien*, PDCH). They were arrested in December 1985 and January 1986 and subsequently 'disappeared'.

AUGUSTIN AUGUSTE, 'DISAPPEARED' SINCE JANUARY 1986

Augustin Auguste was reportedly arrested on 28 January 1986 in Port-au-Prince by members of the VSN. He was reportedly seen at the Military Hospital and then taken to Fort Dimanche where he is believed to have been shot dead on 3 February. The family of Augustin Auguste has never been given an official explanation of what happened to him.

His daughter told Amnesty International: "My father went out on 28 January 1986. Since then, he has not returned. We don't know where he went. On Tuesday we went to see one of our cousins at the General Hospital. He told us he had seen him at the Military Hospital accompanied by tonton macoutes armed with machetes. He had his head cracked open so he was brought to that hospital to have his wounds tended. And then he was taken back to the Bureau de Supervision Générale (the tonton macoutes' headquarters in Port-au-Prince), and he still hasn't come back. And later I was told that he had been taken to Fort Dimanche, and it was there that he was killed."

Augustin Auguste had previously been arrested on several occasions in connection with his membership of the Haitian Christian Democratic Party.

3.3. DEATHS IN CUSTODY

Deaths of people in the custody of the security forces were reported throughout Jean-Claude Duvalier's presidency. The number of reported deaths suggests that detainees were extrajudicially executed or died as a consequence of torture, disease and lack of adequate food and medical attention. In 1977, Amnesty International stated that in Haiti "arbitrary executions, starvation, appalling hygienic conditions, disease and torture account for one of the highest mortality rates amongst prisoners in any country".²⁴

PRISONER'S TESTIMONY

"As of 23 January 1973, there was a total of 105 political prisoners at Fort Dimanche in the Saline district of Port-au-Prince; about 100 in the dungeons of the Pénitencier National in Rue Centre in Port-au-Prince; about 50 were detained in individual and communal cells in the Casernes Dessalines, under the special jurisdiction of General Bréton Claude, and an indeterminate number were in provincial prisons, at Saint Marc, Gonaïves, Ouanaminthe, etc. All in all, the number of political prisoners still alive in Duvalier's prisons and who have been located is about 400."

Testimony from a former political prisoner released in 1973.

In 1973 the Haitian press reported an account of a message smuggled out of Fort Dimanche by prisoners, stating that between 1971 and 1973, 60 prisoners had died.²⁵ Four years later, the number of reported deaths in custody at Fort Dimanche had more than doubled. Between 1972 and 1977, more than 150 prisoners had allegedly died of various illnesses and starvation resulting from inhumane conditions of detention. Tuberculosis, for example, was rife and left unchecked and untreated by prison medical authorities. Executions were also reported during these years.

Lawyer Hubert Legros reportedly died of tuberculosis in December 1975, in cell number six of Fort Dimanche. Pierre Laurent, a tailor, died the same year from tuberculosis in cell number eight. Prisoners with tuberculosis shared cells with those unaffected by the illness. A prisoner released in 1977 reported that "[t]here were 200 prisoners packed into the prison [Fort Dimanche]. At least 50 of them at any one time had tuberculosis. We had to share 18 glasses to drink with. Naturally the death rate was high because the sick were spreading their germs to others. But as soon as somebody died, they put somebody else in his place... People were always dying from TB or diarrhoea."²⁶

Families were not informed when a prisoner was ill or even when he had died. Information about deaths or the health conditions of prisoners could only be obtained from released prisoners. The Haitian authorities did not acknowledge any death at Fort Dimanche.

Amnesty International documents from 1986 record the cases of two individuals who died in custody at the Hinche military barracks (Central Department). In January 1983, detainee Pierre Joseph was beaten to death. Two years later, on 15 January 1985, Roland Noël, an employee of the Department of Commerce, was arrested in Hinche. It was reported that the following day, soldiers beat him in the courtyard of the barracks. They are said to have taken his clothes off, tied his hands, hung him and beaten him. He died on 21 January 1985.²⁷ The total number of prisoners who died in detention will probably never be known. It is only through the collection of testimonies from former prisoners that a partial list can be established.

4. HUMAN RIGHTS VIOLATIONS IN HAITI AS CRIMES UNDER INTERNATIONAL LAW

“Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced”

Judgment of the Trial of the Major War Criminals before the Nuremberg International Military Tribunal, September 30 and October 1, 1946.

The acts of torture, enforced disappearance, arbitrary arrests and extrajudicial executions that took place under Jean-Claude Duvalier's government are crimes under international law. Some of these acts amount to crimes against humanity, which have been recognized as crimes under international law since the Second World War. Crimes against humanity are recognized for their particular severity and for shocking the conscience of humankind. They are crimes so serious as to be of concern not only to their victims, the survivors, or the state in question, but to humanity as a whole.²⁸ Such crimes are subject to universal jurisdiction,²⁹ meaning that any state may investigate and prosecute individuals suspected of crimes against humanity.

Jean-Claude Duvalier faces charges of committing crimes against humanity in Haiti even though such crimes are still not defined in Haiti's Penal Code. However, because these are crimes under international law, Haiti nevertheless has an obligation to investigate and prosecute these violations as crimes against humanity and to provide the victims with access to justice, truth and reparations.

There is a reasonable amount of testimonial evidence and numerous allegations to suggest that crimes against humanity were committed under Jean-Claude Duvalier's rule. This warrants an analysis of the definition of crimes against humanity and the presentation of arguments supporting the use of international criminal law to consider the case at hand.

4.1. CRIMES AGAINST HUMANITY

The prohibition of crimes against humanity has been recognized as part of customary international law since the Second World War. All states are legally obliged to punish perpetrators of crimes against humanity, extradite them to a state capable of doing so or surrender them to an international criminal court, regardless of whether or not crimes against humanity were explicitly criminalized under domestic law at the time they were committed. Since crimes against humanity are universally recognized as crimes under international law – and were so at the time when such acts were committed in Haiti – the authorities of Haiti must ensure that those responsible for such crimes are prosecuted, tried and duly punished.

In the 1990s, crimes against humanity were included in several international instruments, including the Statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR). The jurisprudence of these international courts developed the current understanding of crimes against humanity. Crimes against humanity are further defined and criminalized by the Penal Codes of many countries across the globe.

Crimes against humanity were defined in the Rome Statute of the International Criminal Court as so grave as to “threaten the peace, security and well-being of the world.” In other international instruments they are referred to as “an affront to the conscience ... and a grave and abominable offence against the inherent dignity of the human being.”³⁰

The Rome Statute further defines crimes against humanity as certain acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Murder, torture, enforced disappearance, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law amount to crimes against humanity when committed as part of an attack with the characteristics mentioned above.³¹

States have a duty to prevent gross violations of international human rights law that constitute crimes under international law. They also have a duty to investigate such violations effectively, promptly, thoroughly and impartially, and where appropriate, to take action against those allegedly responsible in accordance with domestic and international law. They must provide victims with access to justice and effective remedies, including full reparations.

Because of their number, scale, gravity and systematic nature, the crimes committed in Haiti between 1971 and 1986 under Jean-Claude Duvalier's rule constitute crimes against humanity. They were crimes against humanity during that period and remain so today. Crimes of this nature are not subject to the statute of limitations, and immunity from prosecution cannot be used as an excuse for not putting those responsible on trial.

Therefore, under international law the Haitian state has an obligation to investigate the allegations underlying the charges against Jean-Claude Duvalier, and if admissible evidence supports the charges, to prosecute him. In line with international fair trial standards, any prosecution should take place in an ordinary court of justice with all the guarantees of fair trial for the defendant and the victims. If the alleged perpetrator is found guilty, the punishment should be proportionate to the crimes committed.

4.2. NO STATUTE OF LIMITATIONS FOR CRIMES AGAINST HUMANITY

Crimes against humanity are not subject to statutes of limitations (prescription). Thus, the passing of time does not diminish the responsibility of the state to investigate and prosecute those responsible for crimes against humanity.³²

There is an increasing body of jurisprudence from national and international courts all recognizing and reinforcing the principle that crimes against humanity and other international crimes such as torture and enforced disappearance are not time-limited, and that no statute of limitations applies, irrespective of the provisions in the national legislation of the country dealing with these crimes.

In Haiti's Criminal Proceedings Code (*Code d'Instruction Criminelle*) there is a statute of limitations of 10 years from the moment the alleged crime has been committed if no legal proceedings are initiated within that period. These limitations apply to homicide and other crimes such as torture (Article 466). Prominent Haitian lawyers have recently argued that it is impossible for Haiti's justice system to prosecute Jean-Claude Duvalier for crimes against humanity because this crime is not yet recognized in Haiti's statutes and because of the Code's statute of limitations.³³ However, Haiti, as a member of the community of nations, is under an obligation to prosecute those responsible for crimes under international law perpetrated under Jean-Claude Duvalier's regime. The norm in international law that imposes this obligation on the Haitian state supersedes any norm in Haiti's national legislation.

The prohibition of torture and of forced disappearances are both recognized peremptory norms (*jus cogens*) of international law and as such no derogation is permitted. In 1980, Haiti recognized the principle that no derogation is possible from a norm having attained a *jus cogens* status by ratifying the 1969 Vienna Convention on the Law of Treaties.³⁴ Article 53 of the Vienna Convention states that "[a] treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law ("*jus cogens*"). For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

4.3. TORTURE AS A CRIME AGAINST HUMANITY

The practice of torture is expressly prohibited under international law. Protection against torture is an integral part of the Universal Declaration of Human Rights (Article 5), the International Covenant on Civil and Political Rights (Article 7) and the American Convention on Human Rights (Article 5(2)). Protection against torture is also provided in the case of armed conflicts by the Geneva Conventions (Common Article 3).

Prevention and punishment of torture are also the subject of specific international instruments, in particular the Declaration on the Protection of All Persons from Being Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Inter-American Convention to Prevent and Punish Torture, and the Statute of the International Criminal Court (Rome Statute). The two latter treaties have defined torture as an international crime under the law of nations (*jus gentium*), regardless of where

it takes place and the nationality of the victims or the perpetrators.

The prohibition of torture has been accepted as part of customary international law and, as such, it must be observed by all states including Haiti, even if Haiti has not ratified any of the treaties expressly prohibiting torture. International and national courts have developed extensive jurisprudence supporting this view even in cases where torture was not prohibited by the national legislation of the country in question.

The prohibition of torture has also been recognized as a peremptory norm of international law (*jus cogens*) that cannot be derogated except by another norm of the same status. Consequently, the prohibition of torture as a *jus cogens* norm supersedes any national legislation, including Haiti's national constitution or penal code.

When torture is part of a widespread or systematic attack against civilian population and when the perpetrator of torture knows that their conduct is part of, or intends it to be part of, the attack, the act of torture is considered to be a crime against humanity.³⁵

4.4. ENFORCED DISAPPEARANCE AS A CRIME AGAINST HUMANITY

Enforced disappearance, like torture, is considered to be a crime against humanity when it is committed as part of a widespread or systematic attack.³⁶

The Haitian state agreed to be bound by the norms set forth in the American Convention on Human Rights by ratifying this treaty in 1977. Although the Convention does not expressly prohibit enforced disappearances, it attributes to states parties the obligation to protect the right to life, the right to judicial personality, the right to family life and the right not to arbitrarily detained. The prevention of enforced disappearances is adequate only when these rights are protected. When the state fails to protect these rights, as was the case in Haiti under Jean-Claude Duvalier, enforced disappearance becomes a common practice utilized by the state to suppress alleged opponents or critics of the government, including journalists, trade unionists, political leaders, human rights activists and students.

Enforced disappearance is a continuous crime and even when these acts do not amount to crimes against humanity, they remain crimes under international law. The prohibition of enforced disappearances has also become a norm of *jus cogens* status; a norm that cannot be derogated. This means the prohibition is universal and applies to every state, whether or not it has ratified instruments expressly prohibiting disappearances. Despite Haiti's penal code not including enforced disappearance, Haiti still has an obligation under international law to prevent, investigate and punish enforced disappearances and provide full reparation to the victims or their families.

International jurisprudence has established that enforced disappearance is a continuous crime and no statutes of limitations apply. This principle was re-affirmed in 2004 by the Inter-American Court of Human Rights in the case *Serrano Cruz Sisters vs. El Salvador*. The Court ruling stated that "[enforced disappearance] constitutes an unlawful act that gives rise to multiple, continuing violations of several rights protected by the American Convention and places the victim in a state of complete defenselessness, which involves other related crimes; it is a crime against humanity. The State's international responsibility is aggravated when the disappearance is a feature of State practice".³⁷

Furthermore, the “*Court considers that there is no doubt that the forced disappearance of persons is a continuing crime, which constitutes a complex form of human rights violation, and that, even in the 1970s, it was being considered as such in international human rights law. Forced disappearance signifies a flagrant rejection of the values inherent in human dignity and the most basic principles on which the inter-American system and the American Convention itself are based.*”³⁸

In addition, Haiti is bound by the rulings of the Inter-American Court and its jurisprudence. Not abiding by the intention of these rulings would put the Haitian state in breach of its obligations as a member of the Organization of American States (OAS) and the Inter-American system.

5. CONCLUSION

For 15 years, Jean-Claude Duvalier ruled Haiti with total disregard for the rights of the Haitian people. The grave human rights abuses perpetrated during those years still remain shrouded in absolute impunity.

Throughout the 1970s and 1980s, Amnesty International documented a pattern of arbitrary arrests, incommunicado detention and long-term imprisonment without charge or trial. Torture, enforced disappearance and extrajudicial executions of alleged government opponents were also recorded. The latter are considered grave violations of human rights law, which constitute crimes under international law and amount to crimes against humanity because they were part of a widespread and systematic attack perpetrated against Haitian civilians.

Haiti has an obligation under international law to investigate thoroughly these human rights violations, irrespective of when they were committed. Haiti also has an obligation to put on trial and punish the perpetrators of human rights violations if there is sufficient admissible evidence. Analysing the case of human rights violations during Jean-Claude Duvalier's government exclusively under Haiti's legislation will only perpetuate the prevailing impunity.

The evidence available supports the case that torture, enforced disappearance and extrajudicial executions were state policy under Jean-Claude Duvalier and were perpetrated by state officials belonging to institutions under his direct control. As commander in chief of the Haitian Armed Forces, the police and the Volunteers for National Security, Jean-Claude Duvalier had legal and effective control over the individuals responsible for these grave violations of human rights law. As such, he knew, or should have known, about the human rights violations perpetrated by his subordinates and should have prevented them and held those responsible to account.

The launch of an investigation into crimes against humanity after the return of Jean-Claude Duvalier to Haiti is not only the first step in ensuring justice and reparation for the victims of human rights violations but it is also a historical opportunity to start building a Haitian state grounded in the rule of law, capable of protecting and upholding, once and for all, the rights of the Haitian people.

6. RECOMMENDATIONS

6.1. RECOMMENDATIONS TO THE GOVERNMENT OF HAITI

State apology and reconstruction of collective memory

- Acknowledge state responsibility for past grave human rights violations and issue an official public apology from the Head of State, President Michel Martelly.
- Establish a programme for the reconstruction of Haiti's collective memory based on a thorough investigation into the human rights violations perpetrated under Jean-Claude Duvalier.

Respect the rights of the victims

- Establish the necessary mechanisms, including legal remedies or administrative programmes, to guarantee the right of the victims to the truth, access to an effective legal remedy, and the right to obtain reparations, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.
- Disseminate, through public and private mechanisms, information about all available remedies to the victims.
- Take necessary measures to ensure the privacy of the victims and their representatives and to protect them from threats, intimidation or pressure.
- Make legal assistance available to the victims.
- Make available all diplomatic and other means to ensure access to justice for victims living outside Haiti.
- Establish a mechanism allowing victims and family members of victims in other judicial jurisdictions of Haiti and among the Haitian diaspora to file complaints and become civil parties in the proceedings.
- Promote and take into account the principles developed in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

The investigation into human rights violations during Jean-Claude Duvalier's government must be thorough, effective and impartial

- Ensure that the judicial authorities have access to adequate and sufficient resources to continue with the investigation into the crimes allegedly committed by Jean-Claude Duvalier or his subordinates, and when appropriate, seek the assistance of the international community and UN bodies for obtaining additional resources.

- The judicial authorities must use all available legal means to determine the truth and to prosecute, put on trial and punish all perpetrators and instigators of grave human rights violations and crimes under international law during Jean-Claude Duvalier's government.
- The investigation must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. It must have an objective and be undertaken by the state as its own legal duty and not as a superficial exercise based on the private initiative of victims or their next of kin.
- Issue clear guidelines to the judicial authorities stating that any complaint filed against alleged perpetrators of crimes under international law in the other judicial jurisdictions of Haiti must receive appropriate consideration and be integrated into the file.

Apply jurisprudence from national, regional and international courts

- Take into consideration the jurisprudence created in particular by rulings from the Inter-American Court of Human Rights, national courts, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, when prosecuting crimes against humanity.

Ratification of key human rights instruments

- Ratify or adhere to – without making any prohibited reservation or interpretative declaration amounting to a reservation – the following international human rights treaties:
 - The **International Convention for the Protection of All Persons from Enforced Disappearance** (signed but not yet ratified) and the Inter-American Convention on the Forced Disappearance of Persons. Enforced disappearance must also be criminalized under the Penal Code. The definition should be consistent with Article 2 of the International Convention but it should apply also, as in the Rome Statute, to individuals not associated with the state in any way;
 - The **Convention Against Torture and other Cruel, Inhuman and Degrading Treatment**. Introduce explicitly into national legislation the definition of torture set forth in Article 1 of the Convention and the classification of torture as a crime under international law, in accordance with Article 4 of the Convention, which would allow Haiti to exercise universal jurisdiction of the Convention;
 - The **Rome Statute of the International Criminal Court** (signed but not yet ratified). Introduce in the Penal Code explicit definitions for the crimes of genocide, war crimes and crimes against humanity and of the specific criminal acts under each category such as enforced disappearance, torture, persecution, etc. The Penal Code should also reproduce general principles of criminal law;
 - The **Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity**.
- Incorporate in national legislation the provisions of human rights treaties and international law treaties ratified by Haiti, in particular a provision stating that criminal proceedings and the penalties for genocide, crimes against humanity and war crimes are not

subject to statutes of limitations, and for the obligation to extradite or prosecute persons suspected or accused of having committed those crimes. All new provisions must be consistent with the Rome Statute and other conventions, as well as customary international law.

6.2. RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY AND THE UN SYSTEM

- Provide technical assistance to the judicial authorities, in particular by facilitating access to jurisprudence from regional, international and national courts that could inform the proceedings against Jean-Claude Duvalier.
- Provide financial and political support to the Haitian government in the legal proceedings against Jean-Claude Duvalier and other alleged perpetrators of grave human rights violations in Haiti.

ENDNOTES

¹ Past attempts have been made to prosecute Jean-Claude Duvalier but were unsuccessful in terms of obtaining justice. In 1986, Rev. Gérard Jean-Juste and Etzer Lalanne, then living as refugees in the United States, filed a class action suit under the Alien Tort Claims Act against Jean-Claude Duvalier and Michèle Bennett (Duvalier's wife in the 1980s) for the misappropriation and embezzlement of US\$ 504 millions. In January 1988, the South District Court of Florida judged by default and ordered the full amount to be paid back to the Haitian people and a compensation for the claimants. In France, in September 1999, four suites alleging crimes against humanity were filed by Duvalier victims, but the French courts dismissed the case.

² Amnesty International reports and documents published during the 1970s and 1980s can be accessed at: <http://tinyurl.com/3oh68cv>.

³ In 1964, François Duvalier proclaimed a new Constitution in which he declared himself "president-for-life". The Constitution was amended in January 1971 while François Duvalier fought an illness. Article 100 reads as follows: "the President for Life of the Republic, Dr. François DUVALIER has the right to designate as his Successor, any citizen fulfilling the conditions provided in article 91 of the Constitution".

⁴ Max Rosalie Auguste, also known as 'Max Adolphe', for example, commander of the *tonton macoutes* militia and Fort Dimanche prison under François Duvalier, was removed from her roles at the end of 1971. However, by May 1972 she had been appointed mayor of Port-au-Prince.

⁵ Amnesty International, *The Situation in Haiti*, 20 April 1976 (AI Index: NS 64/76), internal memo, file with the organization.

⁶ See for example: Le Regroupement des Forces Démocratiques Haïtiennes, *Prisonniers politiques en Haïti*. RFDH: Montréal, Canada, 1977.

⁷ The Leopards were finally disbanded in 1989, after they attempted a military coup.

⁸ Amnesty International, *Situation in Haiti*, 20 April 1976 (AI Index NS 64/76), citing the open letter to President Jean-Claude Duvalier published in *Le Petit Samedi Soir* weekly, December 1975.

⁹ Translation of a report based on statements made by the 12 Haitian political prisoners who were released in exchange for the kidnapped US Ambassador in January 1973. Published in Amnesty International, *Report on the situation of political prisoners in Haiti*, 1973, original quoted from Regroupement des Forces Démocratiques Haïtiennes, « Prisonniers politiques en Haïti ».

¹⁰ Exerts from an interview with Haiti Observateur 25 March 1977, quoted from Regroupement des Forces Démocratiques Haïtiennes, « Prisonniers politiques en Haïti ».

¹¹ Recherches Criminelles were renamed the Investigations and Anti-Gang Department following Duvalier's departure.

¹² Sworn testimony given by Jean Gigny Joseph, former member of the Haitian Armed Forces and detained between January 1981 and July 1982 at the National Penitentiary. File with Amnesty International.

¹³ Amnesty International, Haiti Briefing, March 1985 (AI Index AMR 36/02/85).

¹⁴ Amnesty International, Torture in the Eighties. Global Survey. 15 December 1984, (AI Index ACT 04/001/1984).

¹⁵ Amnesty International, Torture in the Eighties. Global Survey. 15 December 1984, (AI Index ACT 04/001/1984).

¹⁶ See ILO, Case(s) No(s). 1025, Report No. 208 (Haiti): Complaints against the Government of Haiti presented by The World Confederation of Labour (WCL). Available at: <http://tinyurl.com/3mhuxfu> (accessed 18 July 2011).

¹⁷ Testimony presented in Amnesty International, "Haiti: Human Rights Violations: October 1980-October 1981," (AI Index AMR 36/012/1981).

¹⁸ Amnesty International, Torture in the Eighties. Global Survey. 15 December 1984, (AI Index ACT 04/001/1984).

¹⁹ The death penalty was totally abolished in Haiti in 1988 and the current maximum sentence for acts of torture is "forced labour for life" (*travaux forcés à perpétuité*).

²⁰ Testimony received by Amnesty International on 1 November 1985.

²¹ The International Convention for the Protection of All Persons from Enforced Disappearance, Article 2. The Convention on Enforced Disappearance was adopted by the UN General Assembly on 20 December 2006. Haiti signed the Convention on 6 February 2007 but not yet ratified it. A similar convention has been adopted within the Inter-American system of human rights, the Inter-American Convention On Forced Disappearance Of Persons which entered into force on 28 March 1996. Haiti has neither signed nor ratified this Convention.

²² Article 8 (b), International Convention for the Protection of All Persons from Enforced Disappearance; Article 17, Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992; Article III, Inter-American Convention on Forced Disappearance of Persons.

²³ See Amnesty International, *Haiti. Disappearances under the government of Jean-Claude Duvalier (1971-1986): Nine cases of concern to Amnesty International*, (AI Index AMR 36/023/1986), 13 August 1986.

²⁴ Amnesty International, *The Amnesty International Report, 1975-1976*.

²⁵ See *Haiti-Observateur*, 23 February – 3 March 1973.

²⁶ See for example first-person accounts of former political prisoners in Haiti such as Patrick Lémoine, *Fort Dimanche, Fort Lamort*; Clause Rozier, *Le Triangle de la mort : Journal d'un prisonnier politique haïtien* ; Dabe Mullington, "Former prisoners paint 'sordid picture' of Haiti", in *The Montreal Star*, 30 September 1977.

²⁷ Amnesty International Report 1986.

²⁸ On crimes against humanity in the context of universal jurisdiction, see Amnesty International, *Universal Jurisdiction: The duty of states to enact and enforce legislation*, (AI Index: IOR 53/008/2001). 1 September 2001, Chapter Five.

²⁹ See *ibid.* and Amnesty International, United Kingdom: Universal jurisdiction and absence of immunity for crimes against humanity, (AI Index: EUR 45/001/1999). 1 January 1999, sec. B.

³⁰ See Inter-American Convention on Forced Disappearance of Persons, Preamble, 9 June 1994. Available at: <http://www.cidh.oas.org/Basicos/English/Basic11.Disappearance.htm>.

³¹ Article 7(1) of the Rome Statute reads as follow: For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

³² This principle is reiterated in several treaties: the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted by the UN GA Res. 2391 (XXII) of 1968; the Council of Europe's treaty: Non-applicability of Statutory Limitations to Crimes against Humanity and War Crimes, E.T.S. No. 82, adopted on 25 January 1974, and Article 29 of the Statute of the International Criminal Court.

³³ See Bernard Gousse's Amicus Curiae, « *Haïti et la notion de crime contre l'humanité* », Le Nouvelliste, 24 February 2011. Available at: <http://tinyurl.com/3cur6ov> [accessed 18 July 2011].

³⁴ Haiti acceded to the Vienna Convention on 25 August 1980. UN Treaties Collection, Vienna Convention on the Law of Treaties, 23 May 1969.

³⁵ The Rome Statute of the ICC defines torture as a crime against humanity as "intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions."

The ICC Elements of Crimes provide the following elements of torture as a crime against humanity:

- "1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
- 2. Such person or persons were in the custody or under the control of the perpetrator.

3. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.”

See Rome Statute of the ICC. Article 7(2)(e) and ICC Elements of Crimes. Article 7(1)(f).

³⁶ OAS General Assembly Resolutions AG/Res.666 (XIII-083) and AG/Res.742 (XVI-0/84); Resolution 828 of 1984 of the Parliamentary Assembly of the Council of Europe; UN Declaration on the Protection of All Persons from Enforced Disappearances, adopted by the UN General Assembly in Resolution 47/133 of 18 December 1992, Preamble, para. 4; Preamble of the Inter-American Convention on the Forced Disappearance of Persons (forced disappearance); and Article 5 of the UN Convention for the Protection of All Persons from Enforced Disappearance.

³⁷ On continuing violations in the context of enforced disappearances, see Inter-American Court of Human Rights, *The Serrano Cruz Sisters v. El Salvador*, Preliminary Objections, Judgment of 23 November 2004, para. 100.

³⁸ Inter-American Court of Human Rights, *The Serrano Cruz Sisters v. El Salvador*, Preliminary Objections, Judgment of 23 November 2004, para. 105.



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'YOU CANNOT KILL THE TRUTH' **THE CASE AGAINST JEAN-CLAUDE DUVALIER**

After 25 years in exile, former dictator Jean-Claude Duvalier returned to Haiti in January 2011. Within days, survivors of human rights violations and the families of victims of his regime filed complaints of torture, arbitrary detention and enforced disappearance carried out by the Haitian authorities between 1971 and 1986. An investigation into serious human rights violations was opened, and Jean-Claude Duvalier was indicted for crimes against humanity perpetrated by the police, military and National Security Volunteers, also known as *tonton macoutes*, all of whom were under his command when the crimes were carried out.

Throughout the 1970s and 1980s, Amnesty International documented the systematic use of torture, arbitrary arrests, incommunicado detention, enforced disappearance and extrajudicial executions against alleged government opponents in Haiti. This report makes public once again the testimonies and other evidence gathered by Amnesty International during Jean-Claude Duvalier's regime, demonstrating that these violations were widespread and systematic and therefore amount to crimes against humanity.

During Jean-Claude Duvalier's years in exile, his victims and their families have not forgotten the abuses perpetrated against them. Their fight for truth, justice and reparation continues, and the Haitian government has an obligation to bring to justice all those responsible, including the former president.

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