

COLLECTIF CONTRE L'IMPUNITÉ
LAWYERS WITHOUT BORDERS CANADA
INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE
INTERNATIONAL COMMISSION OF JURISTS
OPEN SOCIETY JUSTICE INITIATIVE

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OPEN LETTER CONCERNING THE PROSECUTION OF JEAN-CLAUDE DUVALIER

Criminal Proceedings Must Continue

On 16 January 2011, Jean-Claude Duvalier returned to Haiti after 25 years in exile in France. His regime from April 1971 to February 1986 was characterized by widespread and systematic abuses of human rights, including secret imprisonment, torture, and unlawful killings.

On 18 January 2011, the *Commissaire du gouvernement* (State Prosecutor) re-instated a previous criminal investigation against Jean-Claude Duvalier for allegations of political corruption, fraud, and embezzlement, and referred the case to the *juge d'instruction* (Investigating Judge). On the same day, Jean-Claude Duvalier was interrogated about these allegations. Due to the serious nature of the accusations the Haitian authorities confined Duvalier to house arrest pending their investigation.

Since Jean-Claude Duvalier's return to Haiti, at least 22 individual citizens have filed criminal complaints alleging that Duvalier committed widespread and systematic attacks against civilians, amounting to crimes against humanity, including allegations of extrajudicial killings, torture and enforced disappearances.

The *Commissaire du gouvernement* has referred these additional complaints to the *juge d'instruction* for further investigation. To reach the conclusion that a criminal indictment is warranted, the *juge d'instruction* must be satisfied that Haitian judicial organs possess jurisdiction over the offenses, and that there is sufficient evidence to refer the case to the *Commissaire du gouvernement* to issue an *acte d'accusation*.

Jean-Claude Duvalier's lawyers have argued that he cannot be prosecuted, and have urged that the investigation not proceed. However, an *amicus curiae* brief presented to the judicial authorities by the Open Society Justice Initiative demonstrates the following.

- *Amnesty.* Jean-Claude Duvalier's lawyers argue that the 1986 Amnesty Law and Article 466 of the Criminal Investigation Code amended by the Decree of 4 July 1988 apply a ten year statute of limitations to offenses committed under his regime, and that he can't be prosecuted. However, international human rights standards accepted by Haiti make clear that no statute of limitations or amnesty can apply to offenses or conduct that amount to crimes against humanity. The 1986 law introducing an amnesty therefore does not apply to the conduct alleged against Jean-Claude Duvalier, and should be set aside.
- *Retroactive punishment.* Jean-Claude Duvalier's lawyers argue that crimes against humanity were not recognized as crimes in Haiti when he was President. To the contrary, Haiti under Jean-Claude Duvalier signed numerous international agreements accepting that such conduct should be a crime.

The conduct that is alleged against Duvalier, including unlawful killings and torture, is obviously criminal to anyone, and has been so recognized since Jean-Claude Duvalier's rule in the 1970s. Crimes against humanity have been acknowledged as criminal offenses since the Nuremberg trials in the 1940s.

- *Criminal Offences.* It has also been argued that because the Haitian Criminal Code does not contain any international crimes it is impossible to prosecute Jean-Claude Duvalier. In fact, there are numerous criminal offences with which Duvalier can be charged under Haitian law, including murder and sequestration, which by their widespread or systematic character can properly be characterized as crimes against humanity.

In Haiti, the *Collectif contre l'impunité* (Collective against impunity), a group formed by complainants and Haitian human rights organizations - *Centre œcuménique des droits humains* (CEDH), *Kay Fanm* (House of Women), *Mouvement des femmes haïtiennes pour l'éducation et le développement* (MOUFHED), *Réseau national de défense des droits humains* (RNDDH) - fully support the production of the *amicus* and its submission to the Haitian authorities.

The undersigned organizations support the attempts to bring Jean-Claude Duvalier to justice and end the current situation of impunity, and urge the judicial authorities to carefully consider the arguments made both under international and Haitian law that the legal proceedings against Jean-Claude Duvalier should continue.

The criminal process against Jean-Claude Duvalier could shape Haitian collective memory and could bear historical importance, not only for the numerous victims and their relatives who still seek justice, truth and reparation, but also for Haitian society and the international community as a whole.



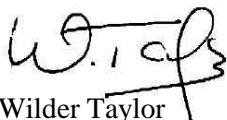
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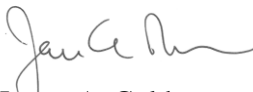
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