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**Subject:** IJDH: Human Rights Update, July 26, 2004

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## **INSTITUTE FOR JUSTICE AND DÉMOCRACY IN HAITI**

### **Human Rights Update, July 26, 2004**

This report will address the current human rights situation in Haiti, as of July 26, 2004, with a focus on human rights protection and respect for the rule of law. Information for this report comes from investigations conducted by IJDH staff in Haiti and from the cited public reports.

#### **I. Human Rights Protection**

People perceived to support Haiti's constitutional government or Fanmi Lavalas, the political party of President Jean-Bertrand Aristide have been systematically persecuted from late February through the present. In many cases, the de facto government of Prime Minister Gerard Latortue is directly responsible for the persecution; in other cases it is refusing to take steps to prevent its allies from persecuting Lavalas supporters.

##### **A. Official persecution**

###### **1. Illegal arrests and detention**

The de facto authorities regularly arrest political opponents in violation of constitutional civil liberties protections. This section will focus on persecution of officials and prominent supporters of the Constitutional government, whose cases are well documented. But information from relatives and from visits to prisons throughout Haiti indicates that the prominent cases are only the tip of the iceberg, that every prison in Haiti contains dozens of people held for political reasons without the benefit of any legal proceedings.

As in the US and other countries, warrants are required for arrests in Haiti unless the police observe a crime being committed or are in hot pursuit of a suspect. The de facto government routinely ignores this requirement when making political arrests, including the following cases:

Pierre Reynold Charles, a professor at the State University, and a prominent Lavalas supporter. Professor Charles has been a leading speaker, over the last year, in favor of restitution from France of Haiti's independence debt. He was arrested on May 2, without a warrant.

Annette Auguste, a folksinger and well-known Lavalas activist in her sixties, arrested on May 9. Although U.S. Marines actually made the warrantless arrest, Haitian authorities keep her in prison.

Arens Laguerre, a cameraman for Teletimoun, a children's television station, arrested without a warrant on May 28.

Jacques Mathelier, the Delegate of the South Department, arrested without a warrant in June.

French UN troops attempted a warrantless arrest of Moise Jean-Charles, the elected Mayor of the town of

Milot, on June 14. When Mr. Jean-Charles fled, his wife and wife's uncle were arrested, without a warrant. Both spent the night in prison before being freed.

The Constitution prohibits the arrest of a relative or any other person in the place of a suspect. This provision was enacted to outlaw a traditional practice of Haitian dictatorships- holding the family members of political opponents hostage, to force the opponent to turn himself in for persecution or stop his political activities. In addition to Mayor Jean-Charles' family members, ten family members of Annette Auguste, including a child, were arrested along with her. The brother of Myrtho Julien, the Departmental Delegate for the North, was arrested when Mr. Julien could not be found. All of these relatives were eventually released, with no charges ever made against them.

The Constitution forbids arrests between 6PM and 6AM, unless the police see a crime being committed or are in hot pursuit. This provision sought to outlaw another dictatorial tradition, political arrests made in the middle of the night, when there were fewer witnesses. Former Minister of the Interior Jocelerme Privert, arrested on April 4, and Annette Auguste were both arrested in the middle of the night, in their homes. The attempt to arrest Mayor Moise Jean Charles took place at 4AM. In Minister Privert's case, the de facto Minister of Justice, Bernard Gousse, personally led the illegal operation.

Victims' families report that hundreds of less prominent Lavalas supporters have been arrested throughout the country, often in violation of several constitutional provisions. These reports cannot be confirmed, however, because the prison authorities do not allow independent human rights groups full access to the prisons and prison records. Preliminary investigations do indicate that significant numbers of supporters of the Constitutional government are incarcerated without a warrant or judicial order in Port-au-Prince, Les Cayes and Gonaives. In addition, there have been persistent reports of police conducting large, sweeping arrest operations in poor neighborhoods that are considered Lavalas strongholds. The police claim that the arrestees are common criminals, but as there are no warrants or subsequent judicial action, it is impossible to confirm this claim.

The Constitution requires that arrestees must be released if they are not brought before a judge who confirms the arrest's legality within 48 hours of arrest. The following prominent arrestees were not released, despite not being brought before a judge within 48 hours: Professor Pierre Reynold Charles, journalist Arens Laguerre, Delegate Jacques Mathelier, former Prime Minister Yvon Neptune and former Minister of the Interior Jocelerme Privert. In most cases, no regular criminal procedure is being followed, the detainee is merely sitting in prison. Neither Prime Minister Neptune nor Minister Privert have ever been brought before the judge who issued their arrest warrant. On July 20, over thirty prisoners in Gonaives began a protest action because they had not been brought before a judge. Many low-profile prisoners in Les Cayes and Port-au-Prince report that they have never seen a judge.

Delegate Jacques Mathelier was brought before a judge, who ordered his liberation on July 12, because there were no legal accusations against him. In response, prison authorities transferred Mathelier out of that judge's jurisdiction, to the National Penitentiary. Mathelier remains in prison, and has become gravely ill because of the prisons' unsanitary conditions.

In addition to procedural illegality, in many cases of imprisonment of Lavalas partisans the case file contains no accusation or other indication that the person detained committed a crime. Press reports state the basis as rumors or accusations by anti-Lavalas human rights organizations, but there is no legally cognizable basis in the files. For example, Prime Minister Neptune was arrested for an alleged massacre in February called the "La Scierie Massacre," apparently based solely on a public denunciation by a human rights group. No complaint was filed, nor have witnesses come forward against Mr. Neptune in that case. After journalists and independent human rights groups reported that there was little proof the massacre happened, never mind that the Prime Minister was involved, the alleged justification was changed to another incident in December, at the State University. But no witnesses or other evidence against Mr. Neptune have been produced for that incident either.

Shortly after the attempted arrest of Mayor Moise Jean Charles, a local judge issued a report confirming that there were, in fact, no outstanding accusations against him. Professor Reynold Charles is accused of "distributing a police uniform," but there is no complaint, witness statement or evidence to justify the charge. Annette Auguste is also named as a suspect in the December events at the University, but no proof of her involvement has been produced.

The prisons are dangerously overcrowded and unsanitary. Many prisons were destroyed by the insurgents, especially in Cap Haitien, Gonaives, Les Cayes and Jeremie. The large influx of prisoners, including many political prisoners, are crowded into the remaining areas. There is not adequate food, potable water or

healthcare, and many prisoners have become seriously ill.

## **2. Illegal Searches**

Haitian law requires a warrant, and the presence of a Justice of the Peace, for all searches. The houses of Moise Jean-Charles and Annette Auguste were meticulously searched, without the presence of a judge. Both of these searches took place between 6PM and 6AM, in violation of the Constitution.

## **3. Persecution of the Press**

Radio TiMoun and TeleTimoun were illegally closed by the government on May 18, and have not been allowed to broadcast since. They were closed on the basis of an oral order by the Minister of Education, who has no authority in the matter. There is no evidence in the court file to justify the closing, and the proper legal procedures for closing the station were not followed.

Arens Laguerre, a cameraman for TeleTimoun station, was arrested illegally on May 28. After protests, the police claimed he had bullets in his pockets. Laguerre was not released until the New York-based Committee to Protect Journalists issued a protest.

## **4. Infringement of Freedom of Speech and Assembly**

The police illegally stopped a legal pro-democracy demonstration on May 18. The de facto government induced the U.S. Marines in the Multinational Interim Force to assist in stopping the demonstration by claiming that the demonstration was illegal, as the organizers had not given the required notice. The demonstration had, in fact, been announced well in advance, and the police subsequently admitted that the organizers had provided proper notice. Police fired on this peaceful demonstration, killing at least one person. The arrest of Annette Auguste, a prominent demonstration organizer, came just after the demonstration was announced. Radio and TeleTimoun were closed the afternoon of the demonstration, after they had reported on the large number of participants.

The arrest attempt against Mayor Jean-Charles took place the morning after he had helped organize demonstrations in Cap Haitien and Milot. He has also spoken widely since February, in the Haitian and U.S. media, about repression in Haiti.

## **5. Infringement on the Independence of the Judiciary**

On July 1, ANAMAH, the national judges' association, issued a press release deploring the increase in the politicization of justice and illegal arrests over the last four months. The refusal to obey the judge's release order for Jacques Mathelier illustrates this trend. According to lawyers for Pierre Reynold Charles, the judge in his case was about to prepare a liberation order when the prosecutor called him up and ordered him not to. Lawyers representing political prisoners complain that this interference has become standard operating procedure.

## **B. Failure to Protect Citizens**

Many pro-democracy and Lavalas activists have been attacked and threatened by paramilitary gangs. Although these groups are not formally integrated into the de facto government, they work together closely: in many areas police and paramilitaries conduct joint operations or share facilities; the police and prisons hold people the paramilitaries arrest illegally; and de facto officials appear publicly with paramilitary leaders, in one case lauding them as "freedom fighters." The paramilitaries persecute political activists, students, journalists, judges, prosecutors and other civil servants, as well as women, including women who were victims of rape under the 1991-1994 dictatorship. Hundreds, probably more than a thousand, have been killed, many others beaten. Hundreds of houses have been burned and destroyed. Although conditions make it impossible to verify the exact number, thousands of people are in some kind of hiding, especially in Port-au-Prince, where victims from the countryside have fled rural persecution, and urban victims stay with relatives and friends in different neighborhoods, or sleep at a different house each night.

The Director of the State Hospital Morgue in Port-au-Prince reported that the morgue had disposed of over 1000 bodies in the month of March alone. Although some of these may have died of natural causes, in a normal month the morgue disposes of 100 cadavers. The Director said that many of the 1000 disposed bodies arrived with hands tied behind the back and bullet holes in the back of the head. The Catholic Church's Justice and Peace Commission reported finding 300 cadavers in the street in February and March, most with bullet holes, and estimated that the total number of killings could be as high as 500.

The insurgents have also attacked the press, with impunity. They have illegally abducted, detained and

beaten at least three journalists they consider insufficiently supportive. They have also destroyed at least four entire radio stations, in Cap Haitian and St. Marc.

## **II. Respect for the Rule of Law**

There have been no attempts to arrest anyone for attacks against Lavalas supporters, including perpetrators actually convicted of crimes during the previous de facto regime (1991-1994). The insurgents attacked the prisons in the days leading up to the February 28 coup d'etat, and released all the prisoners, including people convicted of major human rights violations, and others legally imprisoned pending trial. Human rights abusers convicted in absentia returned to Haiti from abroad with the insurgents. Some of the escaped convicts work with police to identify Lavalas supporters, who are subsequently abducted or killed.

Approximately thirteen people convicted in the Raboteau Massacre Trial were among the prison escapees, including former soldiers such as the notorious Captain Cenafils Castera and FRAPH members. Many of them had been identified as serious human rights violators by the US government between 1991 and 1994. Jean Pierre, a.k.a. "Tatoune," a local FRAPH leader and current leader of the Gonaives Resistance Front, was also convicted for Raboteau, but escaped in 2002. The US had deported three members of the high command who had been convicted in absentia for Raboteau: Carl Dorelien, Hebert Valmond and Jean-Claude Duperval, so that they could face justice. All three escaped from the National Penitentiary on February 29.

Jodel Chamblain, convicted in absentia in the Raboteau Massacre trial, did turn himself in, but the Minister of Justice declared that "he had nothing to fear from Haitian justice." He has been reported to circulate freely in the prison, and even question visitors to other detainees.

Former dictator Prosper Avril was also in prison, having been formally charged in the 1990 Piatre massacre. A US Federal Court had found him liable in a civil case for his widespread use of torture against political opponents. He escaped on February 28. Henri-Robert Marc-Charles, also charged with murder in the Piatre case, is now a senior advisor in the Ministry of the Interior.

The Latortue government has made no effort to disarm the insurgents and other allies who are carrying and using illegal weapons. Heavily-armed paramilitary groups illegally control many areas of the country, marking a return to the practices of military dictatorships. The armed gangs make arrests, without warrants or other legal authority, especially in St. Marc, Cap Haitian and Petit-Goave. Some even pronounce and execute death sentences, with no trial. The police and judiciary collaborate with this illegality, by holding the arrestees. The military's traditional allies, the quasi-military "Section Chiefs" have started to reclaim power from local elected officials.

The Latortue government has done nothing to investigate attacks against journalists and radio stations, or to punish the perpetrators.

In addition to irregular units exercising illegal power, the government has also illegally integrated former soldiers into regular Haitian National Police units, bypassing the police force's requirements and procedures for recruitment, training and promotion. This practice decreases police accountability, and increases politicization of the force. When the US helped establish the Haitian National Police after 1994, it screened many former soldiers, and determined that the vast majority were not fit for civilian police duty. Integrating such people into the force now is a recipe for abuse and repression.

## **III. Conclusion**

The Latortue government must immediately stop all persecution of those perceived to support Lavalas or Haiti's constitutional government, and must start scrupulously respecting the Haitian Constitution's civil liberties protections. It must not only end abuses by its own police and judicial officials, but also bring its paramilitary allies under the rule of law.