

Summary of Appeals Court hearing of June 14, 2006, on behalf of Annette Auguste (Sò Ann), Paul Raymond and Yvon Antoine

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On Wednesday, 14 June 2006, Annette Auguste (Sò Ann), Paul Raymond and Yvon Antoine (Zap Zap) appeared before the Court of Appeals of Port-au-Prince for a hearing of their appeal against the April *ordonnance de clôture* by investigating judge Mimose Janvier in the case concerning their alleged implication in the violent incidents of 5 December 2003 at the Faculty of Humanities of Haiti's State University in Port-au-Prince. The complainants in the dossier had reported that on the said date, students holding a pro-opposition demonstration against the government of President Jean Bertrand Aristide had been attacked by a group of pro-government counter-demonstrators. Several people sustained injuries during the incident and doors, windows and furniture in the faculty building were damaged (for a detailed analysis of the *ordonnance* see IJDH-article of April 21, 2006 at http://www.ijdh.org/articles/article_recent_news_4-24-06.html).

The appeals hearing before a three-member bench took place in a packed courtroom and with a strong media presence. The defense council was composed of Me. Mario Joseph, Me. Jean-Frédéric Bénèche and Me. Axène Joseph. The *Commissaire du Gouvernement* (prosecutor) at the Appeals Court was represented by assistant *commissaire* Florence Mathieu who was appointed to the post by the Interim Government earlier this year. The *Commissaire du Gouvernement* to the Appeals Court is the representative of the Executive Branch in the appeals proceedings. In his or her request (*réquisitoire*) to the Court, the *Commissaire du Gouvernement* is expected to provide an assessment of the admissibility of the appeal and the arguments put forth by the defendants. Given that pre-trial investigations in the Haitian system are conducted by an investigating judge and not, as in the Anglo-Saxon system, by the prosecutor's office, the representative of the government is not automatically opposed to the defense, but may equally request that the judge's *ordonnance* be rescinded on the grounds that the law and the defendants' rights were not respected by the investigating judge.¹ However, in her written *réquisitoire* prior to the appeals hearing, *Commissaire* Mathieu had neither argued on the admissibility nor on the points of appeal put forth by the defendants, but had merely repeated the wording of the *ordonnance* stating that Annette Auguste, Paul Raymond and Yvon Antoine must stand trial before a criminal tribunal.

The appeals hearing started with a discussion on whether the appeals of Paul Raymond and Yvon Antoine against the judicial *ordonnance* had been submitted on time and could be heard by the Court. Substitute *Commissaire du Gouvernement* Mathieu claimed that the appeals writs on behalf of Paul Raymond and Yvon Antoine were not part of the file. The defense was however able to present the copies of the appeals writs showing a confirmation of receipt, thus proving that although their appeals had not been filed at the same time as Annette Auguste's appeal, they had

¹ For example, in the appeals proceedings against the *ordonnance de cloture* in the La Sciérie case, charging former Prime Minister Neptune and others, the *Commissaire du Gouvernement* of the Gonaïves Appeals Court had requested the Court to declare well-founded most of the appellants arguments and thus to annul the *ordonnance* and to replace it by a new *ordonnance* stating that there are not charges against the defendants.

still been filed within the legal delay and in due form by assignation to the *Parquet* (Prosecutor's Office) of the First Instance Tribunal (Trial Court), which had to forward them within 48 hours to the *Commissaire du Gouvernement* at the Court of Appeals. The Court awarded time for the clerks to search for the appeals writs and it turned out that they had indeed been forwarded to the Court and placed in the case file, although they did not figure in the document inventory. It was thus established that all three appeals had been submitted in time and in due form. The Court consequently ruled that it would hear the appeals of all three defendants who were present in court. The Appeals Court however refused to hear the appeals and the arguments put forth by the defense on behalf of René Civil, Ricardo Etienne and Claudette Estimable, who equally filed an appeal within the legal delay and were presented in court by BAI's lawyers. The Court based its rejection to hear their appeals on the grounds that they had been summoned by the Court to appear at the hearing, but had not presented themselves (the three are not in custody). This refusal to hear the appeal of those absent is not supported by the law and constitutes a violation of their right to defense as their lawyers were present to present their appeals arguments on their behalf.

Next, the defense counsel read out the appeals arguments for Annette Auguste, Paul Raymond and Yvon Antoine. On behalf of Ms. Auguste, whom the *ordonnance* charges with complicity in the offenses of *association de malfaiteurs* (criminal conspiracy), assault and battery and destruction of property, the defense noted that she was arrested illegally, without a warrant, in the middle of the night by US marines on the night of May 9 to 10, which made her detention illegal. Second, the defense argued that the *ordonnance* lacks an adequate basis for criminal charges, and does neither establish with the necessary precision the elements of cited offenses of either direct participation or complicity. The defense noted that Article 45 of the Haitian Penal Code requires a specific act of assistance or abetment, which facilitated or provoked the offense.

The defense noted that the *ordonnance* bases all charges against Annette Auguste on merely two allegations: That she was responsible for all demonstrations by the Lavalas Party and that "some persons" (without naming them) had pointed at her as the one who had allegedly distributed lashes to government supporters in the context of a different incident on Place d'Italie, a year earlier, on December 3, 2002. On the first allegation, the defense argued that the person responsible for a demonstration is the one who notifies it to the Police according to the Decree of 23 July 1987 and that the investigating judge had not established that Annette Auguste had signed such a notification or had in any other capacity prepared or participated in the demonstration of 5 December 2003. On the second allegation, the defense denounced that there was no connection between the alleged events of December 3, 2002, and those of December 5, 2005, and that the *ordonnance* grossly violates the rules on connectivity of offenses as laid down in Article 113 of the Haitian Code on Criminal Procedure.

On behalf of Paul Raymond, equally charged with complicity in the alleged offenses, the defense argued that the *ordonnance*, apart from not establishing the elements of the primary offenses, does not determine Paul Raymond's act of complicity in these offenses, but had merely claimed that he was the leader of a popular organization (*organization populaire*), that he had made earlier declarations considered inflammatory by some and that he was among those who had launched the operation "Etau Bouclier" against the then opposition movement. The defense observed that the *ordonnance* neither explains what the judge implies by vaguely referring to the so-called "Operation Etau Bouclier", nor shows the required link between Paul Raymond's

earlier declarations and the events of 5 December 2003 or his connection with any of the alleged perpetrators (the *ordonnance* does never even allege that he was himself at the scene of the incident).

On behalf of Yvon Antoine, whom the *ordonnance* charges as co-author of the alleged offenses (in contrast to Annette Auguste and Paul Raymond who were charged as accomplices), the defense challenged that the investigating judge had based her decision to charge on the allegation that Yvon Antoine had made seemingly contradictory declarations during different interrogations, but had neither showed why they were contradictory, nor had respected the principle governing the burden of proof in penal law according to which the defendant does not need to prove his innocence and may even make contradictory statements in his defense, which alone cannot not inculcate him. The defense further argued that the *ordonnance* does not specify any of the alleged victims or their injuries, except for State University Rector Jean Marie Paquiot, and that neither he nor any other witness interrogated by the investigating judge had been able to identify Yvon Antoine as their attacker or as having been present at the scene of the incident. (The *ordonnance* merely states that Yvon Antoine had been accused by “public clamor” (*la clameur public*) of having beaten students and broken the Rector’s legs). The defense also observed that the *ordonnance* does not establish the organizational elements of the crime of criminal conspiracy (*association de malfaiteur*) with respect to Yvon Antoine and replaces these elements with a vague argumentation based on *la clameur publique* (for further analysis on the necessary elements of the *association de malfaiteurs* charge see see IJDH-article of April 21, 2006 - http://www.ijdh.org/articles/article_recent_news_4-24-06.html).

After the presentation of the appeals motivation by the defense council, the court then allowed the three defendants to speak. All three made short, clear and well-founded statements. After each statement, the audience applauded and many people called out “Justice, Justice!”. Sò Ann spoke in French and declared: “I have been condemned before being judged (“*J’ai été condamnée avant d’être jugée*”). I request my immediate release because I am innocent.” She challenged that if anybody in the courtroom had ever been beaten or aggressed by her, they should stand up and raise their finger. Also, if anybody in the courtroom had seen her at the scene on December 5, they should equally stand up and raise their finger.

Paul Raymond spoke next. He particularly emphasized that between November 30 and December 7, 2003, he had traveled outside the country and thus could not possibly have been present at the December 5 incident. He observed that his passport could prove his travel, but that his passport had been seized by the Haitian police at the time of his deportation and arrest and had never been released.²

Yvon Antoine (alias Zap Zap) described his illegal arrest during which the police merely showed him the photocopy of a warrant concerning a different person called “Papi Joe”. He also mentioned that the police had solicited a large sum of money for his release (which he refused to pay). He further reminded the court of the fact that during the two years of his pre-trial detention,

² By request to the investigating judge of 21 November 2005, BAI had asked judge Mimose to address an order to the immigration authorities to locate Paul Raymond’s passport and communicate it to the dossier. However, the judge undertook not steps to comply with this request nor any other reasonable measures to retrieve the passport, although it had been identified as a piece of evidence in the dossier and requesting the passport was part of the judge’s duty to investigate.

he had never been confronted with University Rector Pierre-Marie Paquiot, and that the latter had never identified him in person. He finally drew attention to his voluntary return to the National Penitentiary after the forced mass prison escape of February 19th, 2005. He declared that he returned because he believed that he would find justice. “But I had to learn that for the poor, for people like me, Yvon Antoine, there is no justice.”

After the defendants had spoken, substitute *Commissaire du Gouvernement* Florence Mathieu made a brief statement where she argued that all three defendants had been denounced by witnesses (without specifying who these witnesses were) and that, in addition, they had been denounced by “*la clameur publique*”. She seemed unprepared, which became obvious when she asked the Court to “condemn” the defendants, apparently not being aware that the present hearing was not an appeals hearing on a judgment, but on an appeal against an *ordonnance de renvoi* (which corresponds to the mere indictment in the Anglo-Saxon system). The president of the Court had to correct her. Although it was her role, the representative of the *Commissaire du Gouvernement* did not provide any detailed argument on the points of appeal put forth by the defense and failed to make a coherent request on how the Court should rule on the appeals. The defense was given a short time window to respond where it denounced this shortcoming by the representative of the Government. In their statements, the defense lawyers reminded the judges of the Court of their obligation to rule according to the law and their conscience. Me. Bénèche of BAI also stressed again that Paul Raymond’s passport was in the hands of the Haitian state and that it was unacceptable that, despite a request by Paul Raymond’s lawyers, it had not been produced to be joined to the dossier as a piece of evidence in favor of Paul Raymond’s defense.

At the end, the defense council reiterated their request for provisional release (“*mainlevée d’écrou*”) of the three defendants to which the representative of the *Commissaire du Gouvernement* opposed without reasoning. The Court decided that it would not rule on the *mainlevée* requests, but that it would directly render its decision on the merits of the appeal. The hearing was then closed. The decision on *mainlevée* is defined in Article 80 of the Code of Criminal Procedure as a facultative decision (the judge “*can*” grant a *mainlevée* at any point of the proceedings) so that the Court did not violate the law by discarding the defense’s request for *mainlevée*. However, it is regrettable that the Court did not grant a provisional release to the defendants who all have a fix domicile in Port-au-Prince. There is no indication that they would flee justice and not present themselves at all stages of the proceedings (Yvon Antoine, for example, provided an impressive demonstration of his willingness to cooperate with the justice system by voluntarily turning himself in to the authorities after the prison incident of 19 February 2005 when an armed group stormed the prison and hundreds of prisoners escaped).

During the entire hearing, supporters of the three defendants demonstrated and sang near the courthouse, accompanied by the traditional music of Yvon Antoine’s group Zap Zap. The police had blocked the area in front of the *Palais de Justice*, so demonstrators gathered in the adjoining street. At the moment when Annette Auguste, Paul Raymond and Yvon Antoine were led out of the courthouse in handcuffs, demonstrators broke through the police cordon and ran towards the main gate. Some demonstrators lay on the ground to prevent the prison vehicle from leaving. The vehicle was thus taken inside the gate to pick up the defendants. Officers from the Haitian National Police’s CIMO (crowd control) unit barred the demonstrators and the vehicle was able to leave. Overall, CIMO officers exercised restraint and apparently did not hit the demonstrators. None of the demonstrators appeared to be armed, and none of them threatened the police. Some

demonstrators ran after the vehicle and further on, some stones were thrown. Three cars parked in the street were reportedly damaged by stones. But overall, the demonstration ended peacefully.

The Court is expected to issue its decision on the appeals within the next weeks. Under Haitian law, the decision should have been issued within 30 days of the appeal, which was filed in April.