



## Jean-Claude “Baby Doc” Duvalier Prosecution Comprehensive Update (September 2, 2011)

### Jean Claude “Baby Doc” Duvalier



Jean-Claude “Baby Doc” Duvalier, one of the most notorious dictators of the 20<sup>th</sup> Century, served as the President of Haiti from 1971-1986, following the death of his father, François “Papa Doc” Duvalier.

Gaining power at the age of 19, Jean-Claude Duvalier soon asserted control over the repressive regime created by his father. The Duvaliers used the official military and police forces, as well as the paramilitary *Volontaires de la Sécurité Nationale* (popularly known as the *Tonton Macoutes*), to violently assert their control with widespread impunity. While alleging his support for reforms and increased respect for human rights, Jean-Claude Duvalier’s regime continued to perpetrate systematic human rights abuses against Haitian citizens, including:

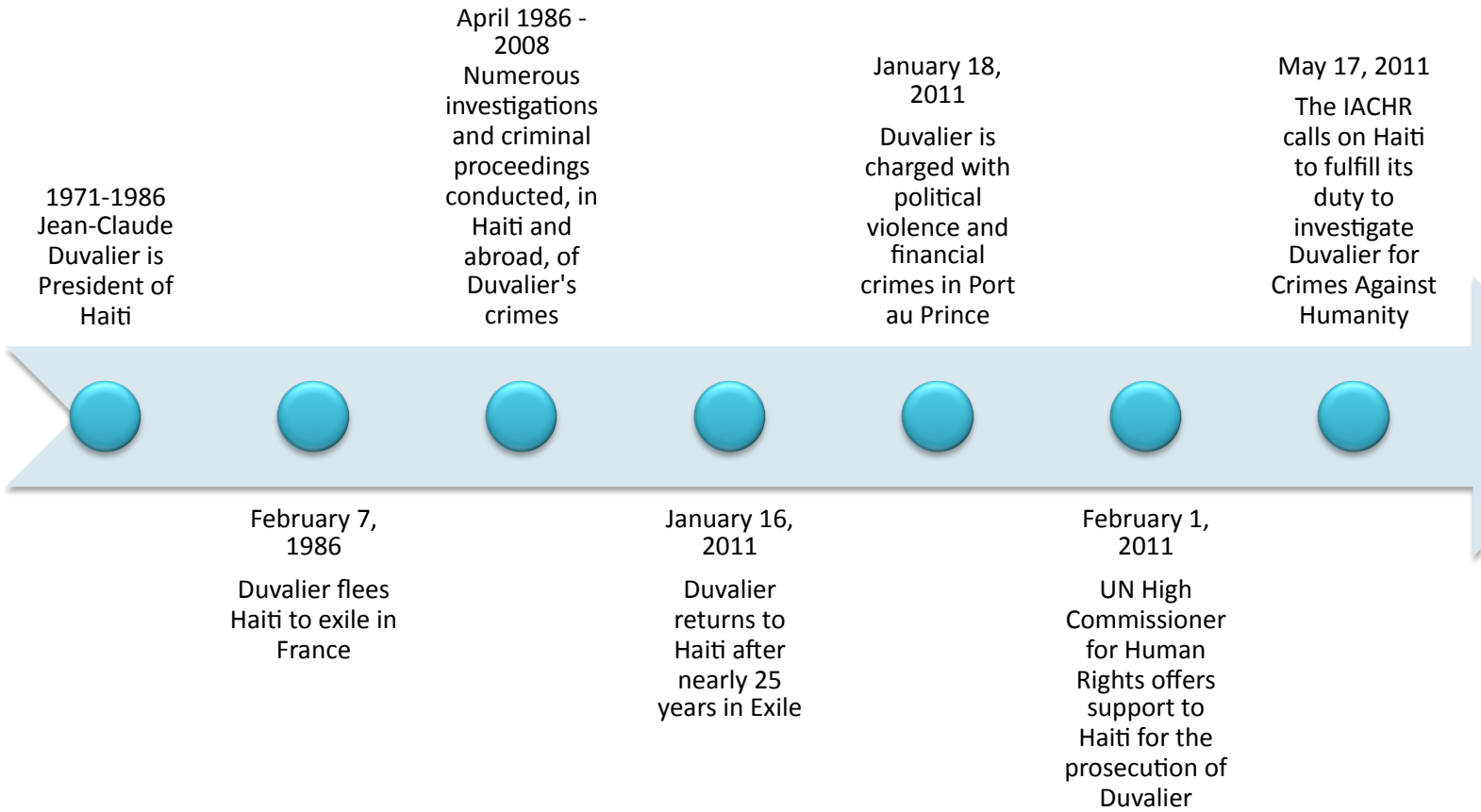
- Curtailment of civil and political rights, including freedom of the press and political opposition;
- Arbitrary detention, exile, forced disappearances, torture, and extra-judicial killing of opponents of the regime;
- Abysmal prison conditions, where many citizens died without having been convicted of any crime;
- Widespread corruption, through which Duvalier misappropriated hundreds of millions dollars of public funds throughout his Presidency.

### Prosecution

Exiled in 1986, Jean-Claude Duvalier returned to Haiti on January 16, 2010. He was soon charged with financial and political violence crimes. Haiti’s duty to effectively investigate and prosecute Duvalier for crimes of his administration is clearly established in domestic and international law:

- Article 276(2) of Haiti’s Constitution domesticates all international legal commitments, meaning Haiti is bound to respect all international treaties to which it is party;
- Haiti is party to both the International Covenant on Civil and Political Rights and the American Convention on Human Rights. These treaties obligate Haiti to provide for the basic human rights of all persons within their jurisdiction, including an effective remedy for violations of such rights.
- According to the Inter-American Court of Human Rights has [declared](#) that under international legal principles, crimes against humanity and other serious human rights

abuses are not subject to any statute of limitations. The Inter-American Commission on Human Rights has classified the systematic abuses of human rights under Duvalier as crimes against humanity.



**The Importance of Duvalier’s Prosecution in Haiti**

While international tribunals generally have the institutional expertise to determine liability for crimes against humanity, the experiences of these same tribunals demonstrate that their use should be limited to contexts where the state is wholly unwilling or unable to provide an effective remedy for grave human rights abuses. International criminal tribunals have often been criticized for their marginalization of the communities most affected by the prosecution and their diversion of funds away from development initiatives that could prevent the recurrence of those abuses.

The lack of public participation in, and feelings of disenfranchisement created by, international criminal tribunals, such as the tribunal created in response to the Rwandan genocide, has resulted in a lack of public support, understanding, and investment in the mechanisms established to obtain justice. Tribunals and reconciliation processes in which the victims feel marginalized or ignored do not function to provide a real, lasting sense of justice. This concern is particularly

poignant in Haiti, where the majority of the population is too young to remember the horrific crimes of Duvalier's regime, meaning recognition of his abuses is already limited. Therefore, IJDH/BAI believes that domestic litigation is integral to ensuring that the public is educated about, engaged in, and supportive of the process.

The International Criminal Court recognizes the primacy of domestic tribunals, and where available such tribunals offer several distinct advantages beyond increased public participation. Because they use pre-existing judicial structures, domestic tribunals may significantly decrease the costs of prosecuting widespread and systematic human rights abuses. Further, domestic prosecution contributes to sustainable growth and skills development in the national judiciary, a benefit not seen from international tribunals. Therefore, funds channeled to such prosecutions not only contribute to achieving justice for past abuses, but may enhance the judiciary's ability to prevent and punish future crimes. In Haiti, the historically fragile justice sector was further weakened in the 2010 earthquake, and is still struggling to rebuild. IJDH/BAI believes that successful prosecution of Duvalier has the ability to strike an important blow against impunity in the Haitian justice system, illustrating a commitment to the rule of law, effectuating sustainable growth in Haiti's judicial sector, and potentially buoying public confidence in judicial tribunals. Furthermore, litigating in a domestic court permits international stakeholders to combine their efforts to bring Duvalier to justice with their skills development and capacity building efforts in Haiti.

### **Haiti's Proven Ability to Prosecute Serious Human Rights Abuses**

In 2000, Haiti successfully tried one of the most important human rights litigations ever in the Americas. This prosecution, spearheaded by the BAI, resulted in the conviction of 16 Haitian soldiers and paramilitary for their role in a massacre in the city of Gonaives. This case marked a sharp break with the long tradition of impunity in Haiti; it was the most complex in the country's history, and was the first broad prosecution of commanders for human rights violations. Most important, the proceedings were declared fair to victims and defendants alike, by both national and international monitors. This prosecution proves Haiti's ability to undertake complex, high-profile cases and to provide justice through fair and impartial proceedings.

### **Our Role in the Prosecution**

To date, IJDH/BAI has completed significant work to support the prosecution of Jean-Claude Duvalier. IJDH/BAI filed extensive evidence concerning Duvalier's political and financial crimes with Haiti's national prosecutor and continues to assist individual civil plaintiffs to file complaints against Duvalier for human rights violations. In addition, IJDH/BAI supported the creation of a civil society organization, the Citizen's Collective for Prosecuting Duvalier (known by its Creole acronym, [KOSIJID](#)), aimed at increasing public awareness of the case and its importance. IJDH/BAI staff attorneys and legal fellows are assisted in this work by a committed group of interns and pro bono assistance from the law firms of Ropes & Gray, Mintz Levin and

Shearman & Sterling. With the assistance of these firms, IJDH/BAI has been able to submit draft questions to the *Juge d'Instruction* (see [Figure 2](#)) to help him navigate the complex history of the regime's criminal activity when questioning Duvalier.

### ***Ongoing work***

As prosecution continues, IJDH/BAI has identified key priorities and goals for our future work. These include:

- *Preparing and filing additional complaints on behalf of individual human rights victims.* The prosecution of Duvalier represents a critical opportunity give a voice to Duvalier's victims and the ability to seek redress for the abuses they suffered. IJDH/BAI is committed to ensuring all victims whose experiences under Duvalier's regime illustrate the existence of systematic human rights abuse and who are interested in serving as witnesses in the trial, are able to come forward and give their testimony.
- *Developing persuasive demonstrative evidence for use in Duvalier's prosecution.* With the pro bono assistance of law and technology firms, IJDH/BAI seeks to ensure the prosecution of Duvalier is given adequate material resources to ensure efficient and effective presentation of all evidence and sources of liability. Use of advanced techniques in the preparation and presentation of demonstratives may also raise the bar for the Haitian judiciary by demonstrating to them the merit and use of new technologies.
- *Increasing international support for Haiti's judiciary.* IJDH/BAI continues to seek opportunities to provide information to foreign governments about the importance of supporting Haiti's domestic judicial system in their prosecution of Duvalier as a means of combating impunity, increasing public confidence, and deterring future crimes by public officials in Haiti.

### ***Continuing Challenges***

Despite these continued efforts, IJDH/BAI recognizes the existence of potential obstacles to successful prosecution. IJDH/BAI is using knowledge gained from its more than 15 years of successfully pursuing difficult cases in Haitian and international courts to actively pursue effective means of overcoming these obstacles. Current obstacles are briefly summarized below.

- Newly-inaugurated, President Martelly and his administration face the substantial challenges of rebuilding Haiti's weakened infrastructure, combating lagging progress in post-earthquake rebuilding, and ensuring adequate healthcare and human rights for all Haitians. Such challenges are compounded by the administration's failure, to date, to install a ratified Prime Minister and form a functioning government. With key governmental posts currently vacant, including the Minister of Justice the already fragile Haitian justice system faces another challenge to its effectiveness. This vacancy has slowed the progress of Duvalier's prosecution. However, while the formation of a government is critical to the prosecution, IJDH/BAI [actively advocates against](#) appointments of those who would pose even greater challenges to combating impunity in Haiti.

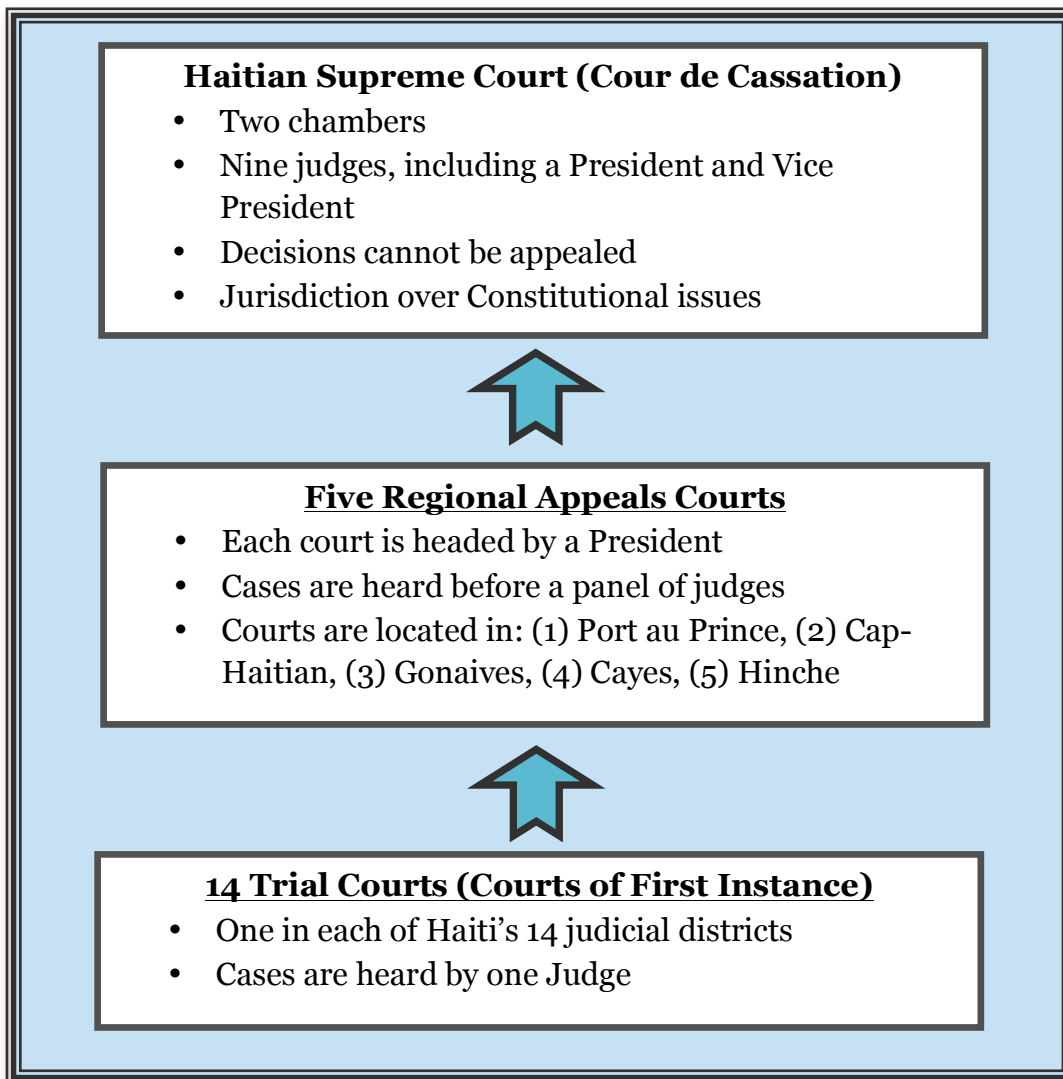
- Neither the United States nor French government has provided adequate support or political pressure for the Duvalier prosecution. Such international support is key to ensuring Duvalier is brought to justice before a fair and impartial tribunal. Neither country has spoken out publicly in support of Haiti's international and national law obligation to pursue the charges against Duvalier. Pressure from the United States and France to ensure that Haiti upholds its international law commitments to the investigation and prosecution of crimes against humanity could indicate a commitment to Haiti's political development and to ending judicial impunity. The United States could also advance the prosecution by providing prosecutors and victims' lawyer with access to government documents detailing Duvalier's command structure, government policy, and human rights abuses. The declassification of such documents may be critical to successful prosecution. Both France and the United States should join the Inter-American Commission on Human Rights and the United Nations High Commissioner for Human Rights in supporting Haiti's effective investigation and prosecution of Duvalier. The United States should additionally consider providing efficient access to all relevant documents currently still classified. IJDH/BAI continues to [advocate for such support](#) with our domestic and international partners.
- Many victims and witnesses have declined to participate in the case out of fear they or their relatives could face retaliation. Given the lack of witness protection programs or other means of ensuring security for Haitians testifying against Duvalier, awareness of these concerns is of critical importance, and IJDH/BAI discusses potential security concerns with all potential witnesses. The creation of the victims' advocacy organization, KOSIJID, also allows victims to come together to provide support to one another. The resiliency and dedication of current witnesses, despite such insecurity, makes IJDH/BAI confident that sufficient testimony will be available to prove Duvalier's participation in the systematic violation of human rights in Haiti throughout his regime.

### **Overview of the Haitian Judicial System**

A former French colony, Haiti's judicial system is largely based on the civil law system used in France in the early 19<sup>th</sup> Century. Laws are codified in a series of legal codes, including the civil and criminal codes. Haiti's Constitution also defines basic legal rights of all Haitian citizens and makes clear that any international treaties that Haiti chooses to ratify becomes binding in domestic tribunals as well.

The Minister of Justice holds primary responsibility for overseeing judicial matters in Haiti, as well as responsibility for the security and police forces. Please see [Figure 1](#) for an overview of the Haitian court system, as defined in the 1987 Haitian Constitution.

*Figure 1*



In Haiti, individual civil complainants can join a case originally brought on criminal grounds by the Haitian government prosecutor. Therefore, once criminal charges have been filed, victims attach individual civil claims seeking redress for crimes against humanity onto the existing case, to be heard together.

Complaints are usually filed with the government prosecutor (Commissaire au Gouvernement) who may refer them to a Juge d'Instruction. After receiving a complaint, the Juge d'Instruction has three months to investigate the complaint and determine if there is sufficient basis for prosecution. Because this three month period restarts with each new complaint filed, the period for gathering evidence and investigation by the judge may be extended, such as in the case of

Duvalier where additional individual complainants continue to file claims. As necessary, the Juge d’Instruction may also request an extension to this investigatory period. If the judge allows prosecution, the government prosecutor (and any individual legal representatives of civil complainants that have joined the case) may prepare and present their case before the appropriate court, see [Figure 2](#). In the case of Duvalier, criminal charges have been filed and are currently before the Juge d’Instruction. IJDH/BAI and others are now continuing to prepare and submit the claims of individual civil complainants.

*Figure 2*

