

BUREAU DES AVOCATS INTERNATIONAUX

3, 2^{ème} rue Lavaud

B.P. 19048

Port-au-Prince, Haïti

Tel : (509) 2943-2106 / 07

Email: avokahaiti@aol.com

Port-au-Prince, July 17, 2012

Mr. Jose de Jesus Orozca HENRIQUEZ

President of the Inter-American Commission on Human Rights

1889 F. Street N.W

Washington DC 20006

Re: Request for an investigation of violations of human rights in Haiti

Dear Mr. President,

The *Bureau des Avocats Internationaux* (BAI), who's primary mission is to defend the inalienable rights, indefeasible and inherent to all people, is concerned about the deterioration and contempt for human rights in Haiti and asks the Inter-American Commission on Human Rights (IACHR) to undertake an investigation in Haiti on the human rights situation, particularly since May 14, 2011.

The current government under President Joseph Michel Martelly appears to be regressing back to the practices of the former political regime that were rejected by the Haitian people 26 years ago. This new government tramples the housing rights of internally displaced persons (IDPs) who were victims of the January 12, 2010 earthquake, as well as Haitian children's right to education, by applying superficial solutions to please certain audiences while misleading the Haitian people who still wait for the fulfillment of election promises.

Honorable President and Members of the IACHR, the *Bureau des Avocats Internationaux* would like to bring some serious human rights violations in Haiti to your attention. The situation in Haiti is often analogized to a vast conspiracy by certain representatives of the country who have created a host of illegal and cynical strategies: the subjugation of the Haiti National Police (HNP) and justice, the attempt to control the mass media and remobilize the old army, the cult of personality, etc. Haitians fear that they are returning to a past era akin to that under Duvalier, when a "conspiracy against the internal security of the State" was often used to terrorize and imprison political opponents and/or attempt to force people into exile, Fort Dimanche (Fort of

Death) and/or into a cemetery, and where the whims of the regime and its thugs plummeted the country into instability and violence.¹

President Martelly's failure to hold elections, and his outrageous actions with the State University and the press, the forced evictions of victims displaced by the earthquake and the arrest of a Member of Parliament show that he does not stand for democracy, human rights or the rule of law.

A. Violations of freedom of speech and the press

Even before President Martelly entered the presidency, he regularly made verbal threats to journalists when they asked about controversial issues, such as troubles in the United States. Since he took office, President Martelly has continued to insult and abuse, on many occasions, members of the press within the National Palace.

In December 2011, President Martelly at a press conference confiscated the tape recorder of Eddy Jackson Alexis, a journalist from Radio Kiskeya, and returned it after turning off the unit and removing the batteries. On February 3, 2012, President Martelly insulted a journalist from Radio Kiskeya at a press event. President Martelly instructs journalists on what questions they must ask him to obtain a response.

On February 2, 2012, over 30 grassroots organizations and hundreds of demonstrators demanded that President Martelly respect journalists.² The following incidents were recorded by the Association of Haitian Journalists:³

- a) In Cayes, December 8, 2010, some individuals under the name of Michel Joseph Martelly, ransacked the local station Radio Lebon FM and threatened the journalists after the publication of preliminary results from legislative and presidential elections.
- b) In Port-au-Prince, March 9, 2011, candidate President Martelly was verbally aggressive against journalist Gotson Pierre during a debate concerning the second round of presidential and legislative elections.

¹ « Haïti, le culte de la présidence par Hérold Jean François », *Le Nouvelliste*, February 2, 2012, available at <http://radiokiskeya.com/spip.php?article8498>.

² « Haïti-Press : Protestors Demand President Martelly to Respect Haitian Journalist », February 7, 2012, available at <http://defend.ht/news/articles/community/2612-haiti-press-protesters-ask-martelly-to-respect-haitian-journalists>; « Des manifestants remontés contre Martelly, » *Le Nouvelliste*, February 7, 2012, available at <http://www.lenouvelliste.com/article.php?PubID=&ArticleID=102422..>

³ « L'Association des journalistes haïtiens proteste, » *Le Nouvelliste*, Octobre 10, 2011, available at <http://www.lenouvelliste.com/article.php?PubID=&ArticleID=98121>; <http://www.alterpresse.org/spip.php?article11702>.

- c) In Gonaives, May 22, 2011, agents of the Departmental Unit for the Maintenance of Order (UDMO) ransacked and broke equipment of journalists covering the visit of President Martelly following a fire in the Gonaives public market.
- d) In Port-au-Prince, July 27, 2011, President Martelly at the launch of the travel magazine, *Magic Haiti*, accused the press for being responsible for projecting the negative image of Haiti to the outside and asked the press to shut up. The President threatened to use force against those who spoke ill of the country, including the press.
- e) In Jacmel on July 28, 2011, President Martelly's security guards jostled and expelled journalists from the conference room on a visit he was doing in the city.

In Mirebalais, during a Christmas "solidarity" rally in December 2011 in the town's public square, which was sponsored by President Martelly and then Prime Minister Garry Conille, an individual presented a sign that said "the press gives the President a chance." President Martelly, who was at the podium, saw the sign and said loudly, "This sign is worth US\$100,000, give him a motorcycle."

The President's hostility, verbal attacks and ridicule against journalists who are critical of him has created an atmosphere of fear and a chilling effect on journalists' freedom of expression in violation of Articles 28, 28.1 of the Haitian Constitution of 1987 and Article 13 of the American Convention on Human Rights (ACHR).

B. Constitutionally mandated elections have not been held in a timely manner

Elections that should have been held in November 2011 to renew one third of the Senate and the regional sections (les collectivités Territoriales) have not yet been announced or scheduled.⁴ President Martelly has not established an Electoral Council to organize the elections as required under the Haitian Constitution of 1987. Accordingly, since May 14, 2012, the Senate has only had two-thirds of its seats filled. The terms of the regional section representatives ended in 2011. Some continued to perform their duties and others have been replaced at the whim of the President. As a result, those that remain in office to manage municipal and community section operations have no legal or constitutional legitimacy to perform their duties.

The government's failure to hold elections within the constitutionally prescribed time period constitutes a violation of Haitians' right to participate in government. Under Article 23 of the

⁴ « Les maires ne sont plus maires » *Le Nouvelliste*, May 11, 2012, available at <http://www.lenouvelliste.com/article4.php?newsid=105084>; « Haiti – Politique: Pas de prolongation des mandats des sénateurs sortant, » *Haiti Libre*, May 8, 2012, available at <http://www.haitilibre.com/article-5590-haiti-politique-pas-de-prolongation-des-mandats-des-senateurs-sortants.html>; « Haiti – Politique: Précisions du Ministère de l'intérieur, aux municipalités, » *Haiti Libre*, May 13, 2012, available at www.haitilibre.com/article-5634-haiti-politique-precisions-du-ministere-de-l-interieur-aux-municipalites.html.

ACHR, all citizens enjoy the rights to: a) to take part in the conduct of public affairs, directly or through freely chosen representatives; b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c) to have access, under general conditions of equality, to the public service of his country. The lack of elections violates all three of these rights.

C. Arbitrary and illegal arrest of a Member of Parliament

On October 27, 2011, Arnel Bélizaire, a member of the House of Deputies, was arrested at the Port-au-Prince airport upon arrival from official business in France and led by police escort to the National Penitentiary. Mr. Bélizaire's arrest was a violation of Article 115 of the 1987 Constitution, which prohibits the arrest of a member of the legislature during his term unless by authorization of the House of Deputies or unless he is arrested while committing an act punishable by death or personal restraint. President Martelly alleges that Bélizaire is a convicted criminal who escaped from the National Penitentiary during the January 12, 2010 earthquake and belongs back in prison. Two weeks earlier, during a working session of Parliamentarians in the National Palace, President Martelly publically threatened to imprison Arnel Belizaire after a dispute, despite his parliamentary immunity.⁵

D. Violation of university space

On February 17, 2012, President Michel Martelly attempted to enter and partake in an international symposium held at the Faculty of Ethnology, an entity of the University of State of Haiti (UEH). Student organizers resisted and told President Martelly's security that he was not invited. Haitian National Police officers attempted to "secure the area" before the arrival of President Martelly and 200 pro-Martelly demonstrators, with whom he travelled on foot.⁶ Pro-Martelly demonstrators threw stones into the University courtyard, resulting in property damage. Police officers fired guns and tear gas into the air. Students were roughed up and traumatized by police and Martelly supporters. Four of the student victims were arbitrarily and illegally arrested and held in police custody for hours.

President's Martelly's intentional provocation of a violent demonstration and interference with student's freedom of conscience and expression, and the right to assembly (ACHR Articles 13

⁵"The Arrest of Deputy Arnel Belizaire: Parliament Charges Martelly is plugging into Dictatorship," *Haiti Liberté*, November 8, 2011, available at <http://www.haiti-liberte.com/archives/volume5-16/The%20Arrest%20of%20Deputy.asp>.

⁶ "Students clash with President Martelly and his supporters," *Canada Haiti Action Network*, February 17, 2012, available at <http://canadahaitiacion.ca/content/students-clash-president-martelly-and-his-supporters>; "Haiti: Violence Erupts between Students and President's Entourage," *defend.ht*, February 17, 2012, available at <http://defend.ht/politics/articles/executive/2667-haiti-supporters-of-martelly-attack-students>.

and 15) constitutes a serious threat to the rule of law, democracy in Haiti and the inviolability of university spaces.

E. Impunity and Corruption

In Haiti, each government creates its own Judiciary Reform Commission that in reality does not have much significance. President Martelly has established another such Commission. Haiti must first reinforce its justice system and allocate resources to strengthen its capacity, including reforming the court administrative department, records management and warrants execution by the Judicial Police, as well as guaranteeing a career for Magistrates and judicial independence.

Upon the return of former dictator Jean-Claude Duvalier to Haiti in January 2011, more than twenty complaints were filed before a court for crimes against humanity committed during his time in office. The investigating judge (Le Juge Instructeur) dismissed all charges of crimes against humanity against Mr. Duvalier on the basis that the claims were beyond Haiti's statute of limitation.⁷ The government prosecutor also recommended dropping the embezzlement and corruption charges, but the investigating judge decided to let them stand.⁸

As recognized in a press release by the IACHR, Haiti has a duty to prosecute Duvalier for crimes against humanity to fulfill the rights of Duvalier's victims to judicial redress and remedy under Article 25 of the ACHR.⁹ Such a trial would be the most significant human rights proceeding in Haitian history. It has the potential to end a long era of impunity, improve the performance of Haiti's judiciary, and deliver justice to the hundreds of thousands who were victims of the former "President-for-life."¹⁰ Thus, a denial of justice was committed, as crimes against humanity do not have a statute of limitations, and the Haitian government has an international obligation to prosecute them.

The Haitian government and a senator from the Dominican Republic have been implicated in a large corruption scandal involving the alleged misappropriation of millions of dollars from Haiti's earthquake reconstruction funds.¹¹ Document subpoenas were issued at random for "national security against a conspiracy." The investigation has been used to persecute citizens for their political affiliation, forcing some to go underground because they are being targeted by the prosecutor at the trial court in Port-au-Prince. Records will be distributed to judges appointed

⁷ "Baby Doc avoids human rights abuse charges in Haiti," *The Guardian*, January 30, 2012, available at <http://www.guardian.co.uk/world/2012/jan/31/baby-doc-duvalier-charges-haiti>.

⁸ Id.

⁹ *IACHR Urges the Haitian Authorities to Investigate, Try and Punish the Grave Violations to Human Rights*, February 1, 2012, available at <http://ijdh.org/archives/24662>.

¹⁰ "Baby Doc' Duvalier: His Victims Won't Forget," *The Miami Herald*, January 27, 2011, available at <http://www.hrw.org/news/2011/01/27/baby-doc-duvalier-his-victims-wont-forget>.

¹¹ "Dominican authorities investigating Haitian contracts of senator," *The Miami Herald*, April 2, 2012, available at <http://www.miamiherald.com/2012/04/02/2728451/dominican-authorities-investigating.html>.

and/or chosen for this case, but in all likelihood the judges will only do a nominal investigation, as would have happened under Duvalier's regime.

F. Violations of housing rights of IDPs, victims of the earthquake of January 12, 2010

The only apparent strategy of the Haitian government with respect to victims of the earthquake of January 12, 2010, is to provide internally displaced persons (IDP) camps located in the rich neighborhoods of Petion Ville, a suburb of Port-au-Prince, with small sums of money to force them to leave. The Haitian government implemented this program, providing "financial assistance" amounting to 20,000 gourdes (U.S. \$ 500) for residents of camps Places Saint-Pierre, Place Boyer, Canapé Vert, Mais Gate, Primature, Parc Pélé, and Champ Mars.

Residents affected by this program have been so harassed by officials to leave the camp that they feel they have no choice but to leave, turning the government's initiatives into forced evictions in many cases. According to residents, they will either be removed with force against their will without a penny or moved voluntarily with at least some money. A forced eviction is defined as the removal against their will of individuals, families, and/or communities from their homes without the provision of or access to appropriate forms of legal or other protection.¹² Families facing eviction on public or private land have little to no legal recourse.

Moreover, the U.S. \$500 payment from the government is not a "durable solution" to the problem of a lack of sustainable housing for earthquake victims, as required under the Guiding Principles on Internal Displacement and the Pinheiro principles. With the dramatic increase in rents in Haiti since the earthquake, due in part to the destruction of 180,000 homes, the slow reconstruction, and the influx of aid workers, the U.S. \$500 offered to displaced persons is insufficient to rent adequate housing for a family of five in the metropolitan area.¹³

Human rights defenders and some humanitarian workers believe that with the small amount of money offered and the slow pace of reconstruction, the government's initiative has just resulted in camp residents moving to other makeshift camps, precarious hillsides or courtyards of houses still damaged by the earthquake.¹⁴ These forced evictions orchestrated by the Haitian

¹² See Committee on Economics, Social and Cultural Rights, General Comment 7, Forced Evictions, and the right to adequate housing (Sixteenth Session, 1997), reprinted in *Compilation of General Comments and recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/Gen/1/Rev.6 at 45, (2003).

¹³ *Haiti's Housing Crisis: Results of a Household Survey on the Progress of President Michel Martelly's 100-day plan to close six IDP camps*, University of San Francisco School of Law (Oct. 2011), available at <http://ijdh.org/archives/22383>; Inter-Agency Standing Committee, Haiti Shelter Cluster, Summary Report by Municipality (Aug. 31, 2011) available at <https://sites.google.com/site/shelterhaiti2010/files/110831Summaryreportbycommune.pdf?attredirects=0>; see also Mike Thomas, *One Year on, Haiti Still in Ruins*, BBC NEWS (Jan. 10, 2011) available at <http://www.bbc.co.uk/news/world-12113844>.

¹⁴ "Number of Haitians displaced by quake is falling," *Associated Press*, June 26, 2012, available at http://www.salon.com/2012/06/26/number_of_haitians_displaced_by_quake_is_falling/.

Government pose even greater threat to the safety of people displaced during the hurricane season.

Today, persons displaced from the earthquake still do not have any other place else to live. The government's strategy is inconsistent with the recommendations of the IACHR's precautionary measures issued on November 16, 2011 (MC-367-10).¹⁵ The Haitian government has failed to negotiate a moratorium or put an end to forced evictions. Instead, the Government of Haiti initiates and supports forced evictions in public places and on private land without ensuring that the evictees have access to legal recourse or are relocated to places that offer a minimum level of health and safety.

G. The inaccessibility of justice and the inadequate support for victims of sexual violence in camps or in disadvantaged areas

The Haitian government has not implemented the recommendations that the IACHR issued on December 22, 2010, in its precautionary measures (PM 340/10) with respect to women and girls living in 22 IDP camps. Access to justice was one of the concerns of the IACHR. To date, an institution of legal support for victims of violence and sexual abuse in camps and slums has still not been implemented, as recommended by the IACHR. In most cases that come through the court system, victims are often blamed either for the way they dress, their behavior, or where or what time they were out.

Dysfunction and corruption also heavily influence the Haitian judicial system and the laws it creates. Some investigating judges amuse themselves by calling plaintiffs/victims on their phones to pressure them to negotiate an agreement in favor of the accused at the expense of justice. This illegal practice of telephone calls to plaintiffs asking for bribes or to see them is a blatant violation of the 1987 Constitution, the Haitian law and criminal procedure. But unfortunately this type of corruption has become more common.

The Haitian government should provide access to free legal assistance, especially to the most vulnerable, particularly women and girls.

Under Haitian law, a medical certificate is not required to prosecute sexual assault cases. But officials in the justice system consider them to be essential pieces of evidence and in some cases, the only relevant proof to prosecute a legal claim by victims of sexual violence. The medical certificates are not free, and often courts refuse to accept certificates from private institutions other than those issued by the Hospital of the State University of Haiti (HUEH), which is still on strike.

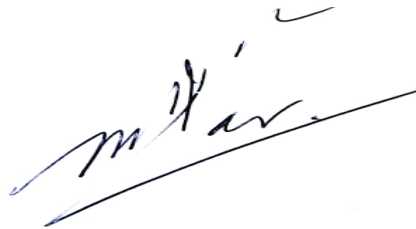
¹⁵ See e.g., *IACHR Expresses Concern Over Situation in Camps for Displaced Persons in Haiti*, November 18, 2010, available at <http://ijdh.org/archives/15413/>.

Regarding gender-based violence, the international community could assist the Haitian Government in training the police, the government commissioners and judges on the issues of gender, sexual exploitation, sexual violence, treatment of minors, victims and defendants in the Haitian judicial system.

The dislocation of state institutions, corruption, various scandals, attacks and intimidation of the press, arbitrary arrests, illegal and unjustified prosecution of political opponents, and impunity are the hallmarks of a dictatorship that undermines democracy. This deleterious and unhealthy environment undermines the respect for human rights.

The BAI, despite all sorts of threats it receives, will not close its eyes and be silent as these dangers haunt Haiti and Haitian society. The BAI reiterates its request to the honorable President and Members of the IACHR to visit Haiti for an investigation into the recent deterioration of human rights and to make recommendations that will be useful to the Haitian Government.

Honorable President and Members of the IACHR, the BAI renews its request for collaboration.

A handwritten signature in blue ink, appearing to read 'Mario Joseph', is written over a horizontal line.

Mario JOSEPH, Attorney at Law

Managing Attorney

Bureau des Avocats Internationaux

cc: Haitian Minister of Justice and Public Security, Jean Renel Sanon

President of the Haitian Senate Commission of Human Rights, Mélius Hyppolyte

President of the Haitian Senate Commission of Justice and Public Security, Francky Exius

President of the Haitian House of Deputies Commission of Justice and Public Security,
Emmanuel Fritz Gérald Bourjolly

IACHR Rapporteur for Freedom of Expression, Catalina Botero Marino

IACHR Rapporteur for Haiti, Rosa María Ortiz

UN High Commissioner for Human Rights, Navanethem Pillay

UN independent expert on the situation of human rights in Haiti, Michel Forst

UN Special Rapporteur on Freedom of Expression, Frank William La Rue

UN Special Rapporteur on Adequate Housing, Raquel Rolnik

U.S. State Department, Corey Andrews

Amnesty International, Gerardo Ducos, Gladys Melo-Pinzon

Members of the U.S. Congressional Black Caucus