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HAITI

“I have no weapon but my journalist’s trade”: human rights and the Jean Dominique investigation

I. Introduction

In one of the most high-profile acts of violence in recent Haitian history, on 3 April 2000 prominent radio journalist and long-time democracy and human rights activist Jean Dominique was shot dead by an unknown assailant outside the courtyard of his radio station, *Radio Haïti Inter*. Station guard Jean Claude Louissaint was killed with him.

Jean Dominique’s death was a serious blow to Haiti, not least because he had been an outspoken advocate for change throughout the country’s last four decades. His radio broadcasts, the first in Creole rather than French, created an unprecedented space for critical thought, not just among the educated elite, but among Haiti’s poor as well. He had survived imprisonment under dictator François Duvalier, forced exile under his son Jean Claude Duvalier and another forced exile in the period of military dictatorship following Haiti’s 1991 coup.¹

Even after the return to constitutional order in 1994, Jean Dominique continued to publicly draw attention to anti-democratic tendencies within diverse sectors of the Haitian political scene and society. The fact that someone of his democratic credentials could be gunned down by an unidentified killer, in a period of democracy after having survived so many trials under so many different dictatorships, stunned Haitians.

The investigation and Haiti’s human rights situation

Targeted killings of journalists, regardless of their political beliefs or personal histories, have a far-reaching detrimental impact within any society. As noted by the Organization of American States (OAS) Rapporteur for Freedom of Expression,

under the American Convention of Human Rights, to which Haiti is a party, states must investigate effectively the murder of journalists, and must punish all perpetrators of such acts. The Inter-American Commission on Human Rights (IACHR) has held that the lack of an effective and thorough investigation and criminal sanctions to punish the principals and accessories responsible for such acts is particularly serious because of its impact on society. When such crimes

¹ See, for example, Amnesty International, Urgent Action 455/01, AI Index: AMR 36/38/91, 19 December 1991, and Urgent Action FR 455/91, AI Index: AMR 36/02/02, 9 January 1992. These actions were in response to the broadcasting by radio of a list of individuals, including Jean Dominique, who the speaker called on the Duvalierist security force, the ‘Tonton Macoutes,’ to assassinate.

go unpunished, not only all other journalists but also all citizens are intimidated, afraid to report mistreatment, abuse or unlawful acts of any kind.²

However, if the case of Jean Claude Louissaint and Jean Dominique has led to widespread questioning of the situation of human rights in Haiti seven years into democratic governance, it is not just because of the latter's prominence as a journalist. Even more significant is the manner in which the investigation into their deaths, and more specifically the repeated blockages and obstacles to that investigation, have over time come to exemplify the range of obstacles to the enjoyment of some fundamental human rights in Haiti today.

These obstacles include lack of independence of the police force and the judiciary; the failure of those institutions to confront ruling party activists responsible for threats and acts of political violence; violations committed by armed groups acting under the auspices of elected officials; and ongoing impunity. Moreover, two years on from the killings of Jean Claude Louissaint and Jean Dominique, threats and attacks on journalists are increasingly frequent, and freedom of expression is ever more vulnerable. The investigation into their deaths has evolved into a key test for the rule of law in Haiti.

The investigation and the human rights movement

There is unprecedented civil mobilization to call for justice for Jean Claude Louissaint and Jean Dominique. It cuts across disciplines and across the political spectrum, including human rights organizations, journalists, church actors, members of the labour movement and grassroots groups. Many groups conduct activities on their own, but there is also a forum for collective action in Haiti and internationally, for example through the *Fondation Echo Voix Jean Dominique*, or Foundation to Echo the Voice of Jean Dominique, explicitly formed to press for justice in this case.

Amnesty International has followed the developments of the investigation closely. In Haiti's legal system, investigations at this stage are carried out by an independent investigating judge, who compiles evidence and makes a report to the public prosecutor, on which any prosecution will be based. Haiti's legal system protects the secrecy of the investigating judge's work, and Amnesty International is not aware of any of the findings. Nor does the organization take a position on the guilt or innocence of any of the individuals named, officially or otherwise, as suspects, in this or any other case.

Amnesty International does, however, have the duty to remind the Haitian authorities of their obligations under international and domestic law. Those obligations include ensuring full,

² Press Release, PREN22/00, Rapporteur for Freedom of Expression Condemns Murder of Haitian Journalist, 3 April 2000.

transparent and impartial justice for Jean Dominique and Jean Claude Louissaint. The purpose of this document is not to address which individual actor or actors may have been responsible for the killings, but to examine the degree to which justice has been done to date.

II. The events of 3 April 2000 and their aftermath

The months of March and April 2000 had been fairly tense in Port-au-Prince, with increasing pressures from different sectors as the May local and legislative election date approached. On the morning of 3 April Jean Dominique arrived at *Radio Haïti Inter's* offices, located on the Route de Delmas linking central Port-au-Prince along the bay to the wealthy area of Pétionville

Jean Dominique in the Duvalier period

Born into Haiti's French-speaking elite, Jean Dominique trained as an agronomist in France. He returned to Haiti in the late 1950s and began working with peasant farmers and urban residents on productive farming techniques.

On 29 July 1958, Jean's brother Philippe, a lieutenant in the army, the *Forces Armées d'Haïti*, was killed by the security forces of newly-installed dictator François Duvalier after an attempted coup. Jean was arrested and spent six months in detention, reportedly suffering torture and ill-treatment.

In the mid-1960s he entered the field of radio journalism with a time-leased slot on *Radio Haïti*, which had been operating since the 1930s. By 1971 he had bought the station and changed its name to *Radio Haïti Inter*.

Jean was the first journalist in the country to realize the potential of radio in a country with, according to the United Nations Development Programme, under 50% adult literacy. He quickly did what no one else had done: he began broadcasting in Creole, the only language of the majority, rather than in French which only a small educated elite could understand. In addition, he broadcast not just local news but international stories, making struggles for independence, popular uprisings and civil rights movements around the world accessible to ordinary Haitians. He gained prominence in 1973 through coverage of the kidnapping of US ambassador Clinton Knox by a armed Haitian group that demanded the release of political prisoners, ransom and transport out of Haiti. The ambassador was eventually released, as were some of the prisoners of Duvalier's notorious Fort Dimanche.

However, Jean's criticism of the Duvalier regime led him and the station into difficulties. During a sweep of dozens of journalists and human rights activists, *Radio Haïti Inter* was raided by the Duvalier security forces on 28 November 1980. They destroyed equipment and arrested Jean's wife and daughters before sending them into exile. Jean, who had had advance warning of danger to himself but did not realize the extent of the planned operation, had temporarily gone into hiding. He managed to reach the Venezuelan Embassy and joined his family in exile in the United States.

Jean and Michèle Montas, his wife, returned to Haiti only after the overthrow of Jean-Claude Duvalier, son of François Duvalier, in 1986. Upon their arrival at the Port-au-Prince airport, they were met by a crowd of tens of thousands. Haitians of all livelihoods and incomes, within Haiti and in the diaspora, contributed funds for the reopening of the station. It went back on the air in late 1986.

higher in the surrounding mountains. He arrived at his usual time, just after 6 a.m. Jean Claude Louissaint opened the gate for him, and Jean parked his car and got out. After only a few steps, however, a man who had been loitering in front of the station quickly entered the courtyard and, pulling a gun, shot Jean repeatedly in the head and chest. He then turned and fired twice at Jean Claude Louissaint, before fleeing in a car that had been waiting for him outside. Jean Dominique, aged 69, and Jean Claude Louissaint, aged 21, were taken to hospital but were pronounced dead on arrival.

The murders were universally condemned within and outside Haiti. After an initial few days of shock, Haitian groups began to organize to press for immediate justice. One of the earliest efforts took place on 7 April 2000 when women's organizations attempted to hold a march of

Jean Dominique and the Lavalas movement

On 16 December 1990 Jean Bertrand Aristide was elected president by a reported 67 % of the vote, in what were generally recognized as Haiti's first free and fair elections. Aristide is said to have offered Jean Dominique the cabinet position of Minister of Information, but he refused, reportedly in the belief that he could best contribute to the ongoing effort from his microphone rather than from within the government.

The instigators of the military coup that overthrew Aristide after only seven months in office also targeted *Radio Haiti Inter*; the bullet holes are still visible on the station walls. Jean and his family went into exile again, in the United States, returning to Haiti after the restoration of constitutional order in 1994. The station's listenership expanded, as the morning news program, *Inter-Actualités*, and afternoon interview program *Face à l'Opinion* were simulcast in the US over Haitian *Radio Soleil*, and later via internet.

Jean was seen as a staunch, if frankly critical, Lavalas supporter. Even when other leading Lavalas figures split off from the party over economic and other policy issues, as in 1996 with the formation of the *Organisation du Peuple en Lutte (OPL)*, Organisation of People in Struggle, Jean Dominique stayed within the existing party and helped to cement the basis of the new *Fanmi Lavalas*. His hardhitting journalism and caustic editorials were famous, and recent targets at the time of his death covered the spectrum from Duvalier supporters to what he considered anti-democratic elements within *Fanmi Lavalas* itself. Other topics of acid commentary included the self-interested interference of foreign governments, particularly the USA, in Haiti's internal affairs; corrupt business people and politicians; electoral processes and oversight; a pharmaceutical company linked to poisoned children's medicines sold to Haitian parents; toxic waste and other environmental issues affecting Haiti's agriculture; impunity for massacres of Haitian peasant farmers; land conflicts; and the need for land reform.

several hundred people to commemorate Jean Dominique's life and to call for justice. It was disrupted by a group of violent demonstrators claiming to support the dominant *Fanmi Lavalas*

(FL) party,³ who set up a burning barricade and chanted political slogans.⁴

In recognition of his status and importance to Haiti, Jean Dominique was given a state funeral. It was held on 8 April 2000, in the national Sylvio Cator stadium, with over 15,000 people in attendance. They included then-President René Préval, Prime Minister Jacques Edouard Alexis, and Jean Bertrand Aristide, as well as a reported 10,000 Haitian peasant farmers from across the country. The first speaker was Roman Catholic Bishop Willy Roméus of Jérémie, a staunch supporter of the Lavalas movement from its beginning, and radio staff and members of numerous different groups spoke as well.

During the ceremony a small group of individuals shouting 'Aristide ou la mort,' 'Aristide or death,' attempted to disrupt the proceedings. Afterwards, members of pro-FL groups set fire to the office of the *Konfederasyon Inite Demokratik* (KID), Unity Democratic Confederation, which served as headquarters for the opposition coalition *Espace de Concertation*. The mob of self-described FL partisans then threatened to burn down the private radio station *Radio Vision 2000*, which is critical of the Aristide government and the FL party. According to some reports they also threatened journalists of the private television station *Télémax*. A few days earlier, journalists of *Radio Vision 2000* had reportedly sent an open letter to the Ministry of Justice denouncing threats against its staff and requesting official protection.⁵

Radio Haïti Inter shut down after Jean's death, but reopened one month later on 3 May, World Press Freedom Day. The day's broadcast consisted largely of Jean's past editorials. President Préval, a personal friend of Jean's, and his wife arrived and spent much of the morning at the station. In the days following the killings, President Préval repeatedly stated his commitment to finding those responsible, and was considered by most involved organizations to be supportive of the investigation.

³ *Lavalas*, the Haitian Creole word for 'flood,' was the term used to describe the vast popular movement that brought Jean Bertrand Aristide his electoral victory in 1990. *Fanmi Lavalas*, or 'Lavalas Family,' is the current name of his political party.

⁴ Amnesty International, *Haiti: Human Rights Challenges Facing the New Government*, AI Index: AMR 36/002/2001, April 2001, pp. 5 and 28.

⁵ Amnesty International, *Haiti: Human Rights Challenges Facing the New Government*, AI Index: AMR 36/002/2001, April 2001, pp 5-6.

III. Human rights and the struggle to bring those responsible to justice

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.⁶

Under the above, in addition to the parallel article of the International Covenant on Civil and Political Rights (ICCPR),⁷ victims of infringement of rights and their families have the right to enforce their rights, if need be by judicial means. In its General Comment on the meaning of article 2 of the ICCPR, the United Nations Human Rights Committee underlined that “the obligation under the Covenant is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction.”⁸

Following in this line, Haitian officials have on numerous occasions publicly declared their commitment to justice for Jean Dominique and Jean Claude Louissaint. On 3 March 2001, for example, *Radio Haïti Inter* broadcast an open letter from *Fondation Echo Voix Jean Dominique* to President Aristide, expressing concern at blockages to the investigation. In response, the president made a surprise visit to the station to express his solidarity. In a broadcast interview with Michèle Montas, he told her, “the government authorities, beginning

⁶ American Convention on Human Rights, article 25. Signed at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969. Haiti acceded to the Convention on 27 September 1977.

⁷ International Covenant on Civil and Political Rights, Article 2.3. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 23 March 1976, in accordance with Article 49. Acceded to by Haiti on 6 February 1991.

⁸ UN Human Rights Committee General Comment 3, Implementation at the national level (Article 2), (Thirteenth session, 1981).

with myself, must do our duties ... a letter is written to me by the victims, it is addressed to me; I don't have the right to remain indifferent."⁹

At the same time, however, a number of human rights difficulties continue to block the course of the investigation, in effect denying the victims' families access to effective judicial remedy. In the two years since the killings, the investigation has met obstacle after obstacle. In that way, in addition to a denial of justice for these two individual victims, the case has become symptomatic of nearly all the human rights issues plaguing Haiti today. The behavior of Haiti's government and other officials with regard to the investigation is today no longer just a test of effective remedy; it is revealing of the extent of a much larger issue, namely the state's commitment to the rule of law itself.

Brief chronology of the investigation

3 April 2000: Jean Dominique and Jean Claude Louissaint are killed; an investigation is opened. The first investigating judge assigned to the case quickly abandons his post, without explanation.

Sept 2000: the second investigating judge, Jean Sénat Fleury, who resigned after receiving death threats, is replaced by judge Claudy Gassant.

Jan 2001: six people have been arrested; however the new judge has reportedly received threats.

June 2001: judge Gassant submits his findings to the prosecutor. He then resigns and leaves Haiti out of fears for his safety.

July 2001: the judge returns after receiving guarantees for his safety. The prosecutor returns the case file to him for supplemental inquiries.

Aug 2001: the judge formally requests that the parliamentary immunity of senator Dany Toussaint be lifted. The Ministry of Justice passes the file to the Senate, which forms a commission to study the question.

4 January 2002: judge Gassant's term expires and is not extended by President Aristide.

23 January 2002: three new judges are named to the case.

31 January 2002: the Senate passes the file back to the judiciary, reportedly for clarification.

⁹ Interview of President Jean Bertrand Aristide by Michèle Montas of *Radio Haïti Inter*, 3 March 2001; transcript distributed electronically by Michele Karshan, presidential staff member.

Threats against judges

The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.¹⁰

As mentioned above, in Haiti's legal system investigations into serious crimes are carried out by an independent investigating judge, who compiles evidence for use by the state prosecution service. Investigating judge Jean Sénat Fleury was the first such judge to actively pursue the case. He began to take statements from a number of people, and several arrests were made. However, he eventually asked to be replaced, citing fears for his personal safety in the wake of death threats.

The investigating judge on the case from September 2000 to January 2002, Claudy Gassant, was widely commended among human rights and other civil society organizations for his energy and courage in the face of obstacles to his investigation. He continued the inquiries begun by Jean Sénat Fleury, and by mid-January 2001, the arrest of a police officer raised the number of those in detention to six. However, pressure on the investigation continued as well; in one example, on 24 January 2001 Gassant was reportedly threatened by a FL deputy and former presidential security guard in the street, after the latter blocked the passage of the judge's vehicle with his own and allegedly threatened to shoot him. The deputy denied the judge's account.

On 8 June 2001, after roughly 80 people had reportedly been questioned, judge Gassant sent the report of his findings to public prosecutor Josué Pierre-Louis, so that the evidence could be reviewed and indictments issued if appropriate. The prosecutor reported having been threatened with death if he did not remove certain names from the investigation. On 13 June 2001 judge Gassant himself resigned, citing political pressures blocking his enquiry as well as threats to his security. Questioning the government and the justice system's will to see the investigation through, he left the country temporarily for his safety.¹¹

It was only after the Ministry of Justice committed itself to backing the investigation, to sanctioning those who attempted to block it and to ensuring security that the judge resumed work on the case. On 6 July 2001, the Inter-American Commission on Human Rights asked the

¹⁰ Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985; para. 2.

¹¹ Amnesty International, *Haiti: Steps forward, steps back: human rights 10 years after the coup*, AI Index: AMR 36/010/2001, September 2001, p. 6.

Haitian state to take precautionary measures to protect judge Gassant, for a period of six months, and to report on the steps taken in that regard.

Judge Gassant's mandate expired on 4 January 2002 and President Aristide, who under Haiti's legal system has the authority to appoint judges and renew their terms, did not extend it.¹² In spite of the high level of public scrutiny of the investigation, no public explanation was given for this decision. On 9 January 2002, Claudy Gassant, feeling that the president's failure to extend his mandate left him open to attack, fled Haiti for the US. On 23 January, three new judges, Josué Agnant, Bernard Sainvil and Joachim Saint-Clair, were named to the case. It was unclear what steps would be taken to ensure continuity of the investigation or to guarantee the safety of the new judges.

In a press conference in early February, President Aristide gave no concrete answer when questioned about the reasons behind the decision not to extend Gassant's mandate. He did not accuse the judge of wrongdoing or of failing to adequately fulfill his duty. Instead the president offered justifications for the delay in extending the judge's mandate, such as the failure of the *doyen*, or senior judge of the court, and the Minister of Justice to give him a report on judge Gassant's work methods to date. He also said that he felt unable to take a decision while judge Gassant was not in Haiti. Greatly concerned by the breakdown in continuity of the investigation and the lack of clarity regarding the reasons for not extending judge Gassant's mandate, a range of NGOs and others within and outside Haiti criticized the president sharply for apparently renegeing on his repeated promise to see justice done.

Meanwhile, at the end of February 2002 judge Agnant began retaking the statements of concerned parties including Jean Dominique's widow Michèle Montas. At the time of drafting this report, it was still not clear which judge or judges held primary responsibility for the investigation. It was also not clear the extent to which the findings of the previous 18 months' investigation would be taken as a basis for ongoing work, or whether the newly-named judge or judges would begin the entire process again.

Resistance of officials to scrutiny by the justice system

The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.¹³

¹² Under the Constitution of the Republic of Haiti, articles 174-175, judges are named to fixed terms, by the president, from lists prepared by the Senate, departmental assemblies or communal assemblies.

¹³ United Nations Basic Principles on the Independence of the Judiciary, para. 1.

Between them the investigating judges called a number of well-known elected, appointed and party officials to testify in 2000 and 2001. While many of them cooperated willingly, others resisted submitting to judicial summons. As clarified above, Amnesty International has no knowledge of the findings of the investigation, globally or with regard to any specific individual. In addition, the organization wholly endorses the principle of presumption of innocence enshrined in international law. At the same time, however, Amnesty International is concerned at the lack of respect for the working of the justice system demonstrated by the incidents described below, and at the potential ramifications of public examples of such contempt.

One public figure summoned for testimony was Dany Toussaint, a former military officer loyal to President Aristide during the 1991 coup, who was elected to the Senate in May 2000 for the FL. In the first months of 2001 judge Gassant issued three summons for senator Toussaint to appear to be interviewed. All were ignored. The judge also summoned several of senator Toussaint's associates, and eventually ordered that one of the police officers serving as his bodyguard be jailed after the guard allegedly became verbally aggressive towards the judge. Many senators were outraged at the judge's summons of their colleague, and threatened to call for an investigation into the propriety of his actions. On 21 February 2001, a tense Senate session focused on the issue of parliamentary immunity. Three FL senators, Lans Clonès, Gérald Gilles and Prince Sonson Pierre, expressed the opinion that the senator should appear before the judge in the interest of justice. The remaining senators, including president of the Senate Yvon Neptune, maintained that he was not required to respond.

Members of the popular organization *Jeunesse Pouvoir Populaire (JPP)*, Popular Youth Power, linked to the FL party, attended the session as spectators and were vociferous in their support of senator Toussaint. According to some accounts, JPP leader René Civil threatened the life of senator Prince Sonson Pierre in an exchange with one of the latter's aides.

Senator Toussaint subsequently wrote to the Senate asking for authorization to go before the judge, and after it was granted he did appear to be interviewed. From March 2001, the judge reportedly met with senator Toussaint seven times. On several occasions during the interviews groups of demonstrators forcibly occupied the courtyard of the justice building in support of Toussaint. On 25 May, sealed preliminary charges were filed against senator Toussaint in connection with the killing of Jean Dominique.

On 12 June, senator Toussaint revealed to the press that, in interviews held in the National Penitentiary at his request by a local justice of the peace, the detainees in the Jean Dominique affair alleged that they had been offered bribes to induce them to incriminate the senator. The senator's supporters called for judge Gassant to be sacked. However, upon review it was determined that the interviews by the justice of the peace were illegal and disruptive of the

confidential legal proceedings underway; eventually the justice was penalized with a six month suspension for breach of procedure.

On 3 August 2001, following the prosecution's request for further information, judge Gassant formally requested that senator Toussaint's parliamentary immunity be lifted. The Minister of Justice passed the request, along with the counter-proceedings initiated by the senator's legal team against the judge, to the Senate for decision. The Minister was criticized by many local organizations for failing to unequivocally support the request for the lifting of the immunity, and his impartiality was questioned by sources who claimed that he had been Toussaint's lawyer in this case before being named Minister. The Minister told Amnesty International that he had given free legal advice to senator Toussaint on an informal basis before being named to his post, but that he did not consider that this affected his impartiality.

After nearly five months' deliberation, the Senate's six-member *Commission Spéciale d'Etude de la Demande de Levée de l'Immunité*, Special Commission to Study the Request for Lifting of Immunity, presented its findings to the Senate on 31 January 2002. In studying the disparate elements of the file submitted by the Minister of Justice, the Commission questioned judge Gassant's handling of the case and advised against lifting senator Toussaint's immunity in the absence of further information.

While the Commission presented its recommendations, several of senator Toussaint's armed guards were posted in the Senate chamber. President of the Senate (and acting head of FL) Yvon Neptune protested, but allowed the guards to remain. In spite of their presence, and that of an angry mob made up of members of popular organizations supportive of senator Toussaint outside the Senate, a vigorous debate ensued between senators in favour of the lifting of the immunity and those opposed.

The majority finally voted to follow the recommendations of the Commission, declining to lift senator Toussaint's immunity and sending the case file back to the investigating judges' chambers for supplementary information. The information requested included, controversially, copies of the documents used by judge Gassant to determine whether senator Toussaint may have been involved in the killings, as well as copies of the sworn testimony of witnesses and possible suspects interviewed.

In leaving the Senate session, senators Prince Sonson Pierre, Gérald Gilles and Lans Clonès were verbally assaulted and threatened with death by demonstrators angry at their support for the lifting of senator Toussaint's immunity. In protest the three refused to take part in future sessions until, on 19 February, president of the Senate Neptune gave strict guarantees for their safety.

Numerous sources within and outside Haiti denounced the Senate's demands for information gathered by judge Gasant as an infringement of the confidentiality of the investigation and a violation of the principle of separation of powers between the legislative, judicial and executive branches. This principle is stated in the Haitian Constitution as follows:

Each power is independent of the other two (2) in its attributes, which it exercises separately. No power can for any reason delegate, in whole or in part, any of its attributes, nor exceed the limits fixed for them by the Constitution and by law.¹⁴

Nonetheless, the Senate sent the file back to the prosecutor, who passed it to the investigating judges' chambers for reply.

The Senate's reluctance to lift senator Toussaint's immunity, and its delays in addressing the question, contrasted sharply with the swiftness of the response to another incident involving a parliamentarian accused of participation in a killing. On the night of 6-7 January 2002, FL-elected mayor of the northern town of St. Raphael, Sernand Sévère, was killed in an exchange of gunfire, reportedly following an altercation between him and his armed guards and FL-elected local deputy Jocelyn Saint Louis and his bodyguards. Within two weeks, Secretary of State for Public Security Jean Gérard Dubreuil reportedly wrote to the public prosecutor, stating that he did so on the orders of President Aristide and asking for the prosecution to go ahead regardless of the accused's parliamentary immunity. By the end of the month the deputy was in police custody. The prosecutor requested the lifting of the deputy's immunity; on 24 January the Chamber of Deputies formed a commission to study the question and on 5 February, less than a month after the crime was committed, voted in favour of lifting the immunity.

In light of the contrasts with the above case, the Senate's ongoing resistance to lifting the parliamentary immunity of senator Toussaint, coupled with its requests for access to confidential judicial information, have been viewed by most observers as a further obstruction to full and prompt justice for Jean Dominique and Jean Claude Louissaint.

Failure in independent and competent policing

The police is created to guarantee public order and the protection of the lives and goods of the citizens. Its organization and mode of functioning are regulated by law.¹⁵

Another impediment to the investigation has involved the behavior of the police. In a similar failure to hold party supporters to account, summonses issued by judge Gasant in his efforts to

¹⁴ Articles 60 and 60-1 of the 1987 Constitution of the Republic of Haiti (unofficial translation).

¹⁵ Article 269-1 of the 1987 Constitution of the Republic of Haiti (unofficial translation).

gather information about the killings were ignored with impunity by a number of prominent individuals, particularly FL officeholders or supporters. In some cases arrest warrants were issued for failing to respond to the judge's summonses; however the police did not act upon any of these warrants, although they were fully aware of both the existence of the warrants and the identity of those named on them.

In July 2001, after having been asked by the prosecution for supplemental information, judge Gassant summoned René Civil, head of JPP, and Paul Raymond, head of another FL-oriented popular organization *Ti Kominite Legliz* (TKL). The two had been widely criticized by local and international organizations for activities such as the public issuance, in January 2001, of threats of physical violence against a list of members of opposition parties and journalists. The threats were made to the press during a press conference in the Saint Jean Bosco church in Port-au-Prince.¹⁶ In spite of repeated calls to the authorities to punish such behavior, and to the FL party to publicly disassociate itself from threats and acts of violence, numerous popular organization members continued to carry out this behavior in the name of *Fanmi Lavalas*.

René Civil and Paul Raymond ignored repeated summonses from judge Gassant, and a complaint was filed against the former in late August 2001 after he reportedly used physically aggressive behavior towards a clerk who tried again to serve a summons on him. Both men publicly questioned the judge's moral authority to investigate the case. On 28 August, JPP activist Jocelyn Lundi was arrested for '*outrage à la magistrature*,' insulting judicial authority, after having allegedly come to the judge's office with a weapon and insulted him.

After summonses continued to be ignored, warrants were issued for the arrest of Paul Raymond and René Civil, and the Minister of Justice publicly referred them as 'fugitives.' Notwithstanding this description, and the arrest warrants, they continued to circulate freely and openly in Port-au-Prince in September and October, participating in public gatherings and speaking with journalists and others.

The blatant disregard for the authority of the justice system and the police, and the complete failure of police to deal with the challenge, seriously damaged the already precarious credibility of these institutions in Haiti. After intense pressure on the authorities to hold party loyalists accountable to Haiti's legal system, Civil and Raymond were reportedly persuaded by highranking figures to comply with judge Gassant's initial summons. On 28 November, Civil and Raymond finally appeared before the judge. They appeared before him again in December, accompanied by a loud crowd of supporters.

¹⁶ See "Haiti: Amnesty International urges immediate response to threats of political violence," AI Index AMR 36/001/2001 - News Service Nr. 7, 11 January 2001.

'Zero Tolerance'

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.¹⁷

Another obstacle to a full and impartial investigation is the incidence of 'popular justice' killings in Haiti. Due to the historical weakness of the justice system and unreliability of the public security force, there is a tradition of citizens taking justice into their own hands. For a time, efforts to strengthen the institutions served as a partial brake to this behaviour, but it was never fully eradicated. In response to public concern about a perceived rise in crime, in June 2001 President Aristide declared a policy of 'zero tolerance' against lawbreakers. Following domestic and international pressure he later clarified that his intention had been for all suspects to be brought before the courts so that they could be tried. However, the message was not understood, or was not heeded; and 'popular justice' killings of suspected criminals by crowds reportedly increased to a significant degree.

On 9 November 2001, Panel Rénéus was arrested near the Dominican border. He was wanted in connection with the killings of Jean Dominique and Jean Claude Louissaint. Rather than transferring him to Port-au-Prince, police held him in the police station in Léogâne. Judge Gassant came to the scene and made some recommendations to the police to guarantee the security of Rénéus, such as transferring him to a locked police cell within the station in preparation for moving him to the capital. The police refused to follow the judge's instructions; shortly afterwards, a mob forced its way into the area and killed Rénéus with stones and machetes in the presence of the judge. Police, though present, did nothing to protect the detainee or to stop the crowd.

On 11 December the police commissioner of Léogâne, Michel Ange Jean Baptiste, was arrested on the orders of judge Gassant and required to account for the lynching. He was released a few days later.

Unofficial armed groups linked to local officials

The Public Force is composed of two (2) distinct corps:

- a) the Armed Forces of Haiti;
- b) the police forces.

No other Armed Corps can exist on the National Territory.¹⁸

¹⁷ ICCPR Article 26.

¹⁸ Articles 263 and 263-1 of the 1987 Constitution of the Republic of Haiti (unofficial translation). Note that the army was abolished by President Aristide in 1995. In late 2001 a petition was presented to the Senate, opening the process of amending the Constitution to reflect that fact.

Yet another human rights issue evidenced in the Jean Dominique investigation has to do with unofficial armed groups. On 15 June 2001, members of popular organizations joined under the banner of 'COSOLDAT,' an acronym for *Comité de Solidarité avec Dany Toussaint*, or Dany Toussaint Solidarity Committee, carried out a violent demonstration demanding the arrest of judge Gassant. They reportedly set up burning barricades and threw rocks in the course of the demonstration.

Phonetically, the group's name in Creole has military overtones, sounding like the phrase for 'body of soldiers', or '*corps de soldats*' in French. The use of threatening language in the guise of an acronym has a worrying precedent in the brutal paramilitary group Revolutionary Armed Front for the Progress of Haiti or *Front Révolutionnaire Armé pour le Progrès d'Haïti (FRAPH)*, the acronym of which sounds like the French and Creole word meaning 'to strike a blow.'

COSOLDAT has taken to the streets on several occasions. Its emergence coincides with two disturbing trends in Haiti. The first is the incidence of human rights violations by armed groups linked to officials who came to power following the 2000 elections. These groups, often composed of political partisans, have no legal standing or public accountability, and have been responsible for numerous acts of violence around the country.¹⁹ The second trend, increasing intolerance by popular organizations linked to the FL party towards perceived opponents, is described below.

Threats and acts of violence by partisans against journalists and others

All Haitians have the right to express freely their opinions, on all subjects and by the means which they choose.

Journalists freely exercise their profession within the framework of the law. This exercise cannot be submitted to an authorisation or censure, except in the case of war.²⁰

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.²¹

Haiti does not have a long history of freedom of speech; that space is one of the things that Jean Dominique was fighting for throughout his long career. Nonetheless, there was a notable

¹⁹ See Amnesty International, *Haiti: Human Rights Challenges Facing the New Government*, AI Index: AMR 36/002/2001, April 2001, pp. 11-12.

²⁰ Articles 28 and 28-1 of the 1987 Constitution (unofficial translation).

²¹ ICCPR article 19.2.

opening after the 1994 return to constitutional order. President Aristide's supporters have good reason to know its value, having been the victims of violent and brutal military repression of free speech in the past.

Discouragingly, though, past repression has not seemed to lead to enhanced respect for free speech and those who practice it. After President Préval's inauguration in 1995, he abolished the Ministry of Information, the position which according to some reports had previously been offered to Jean Dominique by President Aristide. This step removed official channels of communication between the press and the government and, according to some analysts, contributed to future problems. Even more seriously, in January 2000 President Préval declined to sign the Declaration of Chapultepec, a regional press freedom agreement signed by nearly all heads of state in the Americas. He had previously expressed support for the Declaration, and it was not clear why the position changed.

Since Jean Dominique's death, there have been increasingly frequent incidents of threats and attacks on the press. These have been reminiscent in form to those carried out by supporters of the military regime against pro-Aristide media during the coup and subsequent military government, and by Duvalier forces in earlier decades. In fact some of the stations targeted are the same as during those periods.²² *Radio Haïti Inter* continues to receive regular threats, despite heightened security measures.

Below are some incidents of attacks on and threats against journalists with direct links to the Jean Dominique investigation:

- On the night of 3-4 April 2000, community radio station *Radio Unité*, based in St. Michel de l'Attalaye in the department of the Artibonite, was sacked and part of its equipment stolen shortly after it broadcast news of Jean Dominique's death. The station had reportedly received earlier threats.
- As described above, after Jean Dominique's funeral on 8 April 2000, members of pro-FL groups set fire to the office of the *Konfederasyon Inite Demokratik* (KID), or Democratic Unity Confederation, which served as headquarters for the opposition coalition *Espace de Concertation*. The violent mob then threatened to burn down the private radio station *Radio Vision 2000*, which is critical of the Aristide government and Fanmi Lavalas. According to some reports they also threatened journalists of the private television station *Télémax*. A few days earlier, journalists of *Radio Vision 2000* had reportedly sent an open letter to the Ministry of Justice denouncing threats against its staff and requesting official protection.

²² See Amnesty International, *Haiti: Human rights gagged: attacks on freedom of expression*, AI Index: AMR 36/25/93, October 1993.

- On 20 June 2001 Fritson Orius, a *Radio Haïti Inter* broadcaster, was reportedly followed, forced from his car and threatened by two armed men who claimed to be policemen. The men reportedly claimed that they recognized the car he was driving as having belonged to Jean Dominique. The Haitian National Police denied that any of its officers had been involved and said that the men may have been ex members. *Radio Haïti Inter* lodged a formal complaint but no followup was given.²³

In addition to the above incidents, linked to the Jean Dominique investigation, journalists have come under increasing threat and risk of attack in general in Haiti. The Appendix contains a partial list of attacks on journalists and radio stations over the last two years that gives an idea of the increasing frequency of threats and attacks on journalists and their growing severity.

IV. Conclusions

The killings of Jean Claude Louissaint and Jean Dominique were a profound shock, even to a country in which violence and targeted killings are not rare. The fact that Jean Dominique, fierce critic of successive regimes over a period of 40 years, was killed under a democratically-elected government, following Haiti's first peaceful handover from an elected head serving an uninterrupted term, made his death all the more disturbing. Calls to bring those responsible to justice reached an unprecedented level in Haiti, as ordinary citizens from all walks of life called on the authorities to prove their commitment to transparency and an end to impunity for the killers of one of the country's most outspoken and most consistent proponents of change.

At the same time, the investigation into the killings has been hampered by obstacle after obstacle, in effect denying effective remedy for the crime. The obstacles are themselves symptomatic of the primary human rights concerns in Haiti today. Full and impartial justice for Jean Dominique and Jean Claude Louissaint will demonstrate, not just authorities' commitment to justice for those two individuals, but their willingness to confront head on the most problematic and entrenched hindrances to the respect for human rights. Failure to do so, on the other hand, will do irretrievable harm to the aspirations of those Haitians committed to an end to impunity and the establishment of genuine rule of law.

V. Recommendations

With regard to the investigation

²³ Amnesty International, *Haiti: Human Rights Challenges Facing the New Government*, AI Index: AMR 36/002/2001, April 2001, p. 6.

Bringing the perpetrators of the killings of Jean Dominique and Jean Claude Louissaint to justice is not only important in respect of the individual cases, but also sends a clear message that those who commit such acts will be held accountable. When investigations are not pursued and the perpetrators are not held to account, a self-perpetuating cycle of violence is set in motion under the cloak of impunity.

- International standards clearly require states to undertake thorough, impartial and proper investigations and to ensure that those responsible for these killings are brought to justice.
- The object of the investigation should be to determine the identity of material perpetrators as well as those who ordered the crime, and to provide a full account of the truth to the victims' family and society. Results of the investigations should be made public.
- Adequate funds, authority and personnel should be allocated to ensure that full and thorough investigation occurs. The state is responsible for supporting the justice system in carrying out this task, and should be held accountable for its failure to do so.
- Investigators must be empowered to obtain all the information necessary to the inquiry and to oblige witnesses and officials, elected or otherwise, allegedly involved to attend and give evidence.
- The security of judges and other personnel involved in the investigation must be guaranteed, and all necessary material and human resources allocated for this purpose.
- All threats or attacks against the judicial personnel involved in the investigation must be themselves fully investigated, and those responsible held accountable, regardless of their position or party allegiance. Those in public positions must be suspended from their posts until their guilt or innocence has been determined.
- In addition to explicit threats or attacks, the institutions responsible for the administration of justice may be weak and susceptible to more indirect pressure from other state authorities or by the perpetrators. Such pressure undermines the rule of law and cannot be permitted. Those responsible for it must be held accountable, regardless of their position or party allegiance. Those in public positions must be suspended from their posts until their guilt or innocence has been determined.

With regard to eventual prosecution

- If a suspected perpetrator is a law enforcement official or any other state official, they should be immediately suspended from duty pending the conclusion of the inquiry. If found guilty, they should, in addition to the penalty imposed by the court, be dismissed from their post.
- Any prosecution must conform with international standards for fair trial.
- Trial proceedings must be public and transparent, so that the full truth is accessible not only to victims' families but to the society as a whole.

With regard to illegal armed groups

- The Haitian National Police must take responsibility for disarming individuals or groups in possession of illegal weapons.
- The central government must unequivocally reassert the primacy of the Haitian National Police as the country's only legitimate armed group, and support all efforts by the police and justice institutions to prosecute those who carry arms illegally.

With regard to threats and violence against journalists and others

- Collusion between law enforcement officials and private parties in instigating or permitting abuses should be fully investigated.
- All acts of intimidation or violence against journalists must be fully and promptly investigated, and those responsible brought to justice regardless of their position or party affiliation.
- Leaders of all parties must strengthen their chain of command and exercise effective control of their partisans to prevent violence. They must fully cooperate with the authorities in bringing those responsible for violence to justice.
- Haiti must support the Declaration of Chapultepec and all other such instruments.

Appendix: Partial list of attacks on journalists since the killing of Jean Dominique

- On the night of 3-4 April 2000, community radio station *Radio Unité*, based in St Michel de l'Attalaye in the department of the Artibonite, was sacked and part of its equipment stolen shortly after it broadcast news of Jean Dominique's death. The station had reportedly received earlier threats.
- After Jean Dominique's funeral on 8 April 2000, members of pro-FL groups set fire to the office of the *Konfederasyon Inite Demokratik* (KID), Democratic Unity Confederation, which served as headquarters for the opposition coalition *Espace de Concertation*. The violent mob then threatened to burn down the private radio station *Radio Vision 2000*, which is critical of the Aristide government and *Fanmi Lavalas*. According to some reports they also threatened journalists of the private television station *Télémax*. A few days earlier, journalists of *Radio Vision 2000* had reportedly sent an open letter to the Ministry of Justice denouncing threats against its staff and requesting official protection.
- On 3 May 2000, in Pliché in the Department of the South, community station *Radio Vwa Peyizan Sid*, or Voice of the Peasant Farmers of the South, was sacked. The station had reportedly already received threats.
- On 15 December 2000, Gerard Denoze, 34 years old, sports reporter for Port-au-Prince *Radio Plus*, was shot and killed by two unidentified assailants, reportedly as he stepped out of a vehicle in Carrefour. The *Association Haïtienne de la Presse Sportive* (ASHAPS), or Haitian Sports Press Association, said that he had been receiving anonymous death threats for some time.
- On 27 December 2000, the Port-au-Prince private radio station *Radio Caraïbes FM* suspended temporarily its broadcast after having received threatening letters and phone calls, as well as direct threats to individual journalists, reportedly by members of popular organizations close to FL.
- As described elsewhere in this document, in January 2001, Paul Raymond, leader of *Ti Kominite Legliz*, a popular organization close to the *Fanmi Lavalas* party, publicly threatened a list of roughly 80 journalists, clerics and politicians if they did not support the party.²⁴ These included journalists Liliane Pierre-Paul, of *Radio Kiskeya*, and Max Chauvet of *Le Nouvelliste* newspaper.

²⁴ See "Haiti: Amnesty International urges immediate response to threats of political violence," AI Index AMR 36/001/2001 - News Service Nr. 7, 11 January 2001.

- On 9, 10 and 11 June 2001 the director of information of the Port-au-Prince based radio station *Signal FM* reportedly received anonymous death threats after questioning the behaviour of some *FL*-elected senators in his broadcast.²⁵
- On 20 June 2001 Fritson Orius, a *Radio Haïti Inter* broadcaster, was reportedly followed, forced from his car and threatened by two armed men who claimed to be policemen. The men reportedly claimed that they recognized the car he was driving as having belonged to Jean Dominique. The Haitian National Police denied that any of its officers had been involved and said that the men may have been ex members. *Radio Haïti Inter* lodged a formal complaint but no followup was given.²⁶
- On 28 July 2001 *Radio Rotation FM* journalists Reynald Libérous and Claude François conducted interviews with some of the alleged perpetrators of a series of attacks on police stations in the Port-au-Prince area and the Central Plateau. They were reportedly arrested without a warrant and ill-treated by police at the radio station in Belladère, Department of the Center, as police tried to obtain tapes of the interviews.
- Jean Ronald Dupont, a journalist for *Radio Maxima FM*, was wounded in the head on 2 October 2001 while covering a demonstration in Cap Haïtien, Department of the North. The injury reportedly occurred when police fired at shoulder height to disperse the crowd.
- Also on 2 October 2001, *Radio Métropole* correspondent Jean-Marie Mayard was assaulted in St. Marc, department of the Artibonite, by members of a popular organization. They reportedly broke his recorder and threatened to kill him if he did not stop broadcasting criticism of the *Fanmi Lavalas* party.
- On 12 October, *Radio Haïti Inter* journalist Jean Robert Delciné was assaulted and threatened by police after investigating the alleged killing of 16-year-old Mackenson Fleurimon by police in the Cité Soleil area of Port-au-Prince. Family members and witnesses claimed that police killed him after failing to find his brother, whom they suspected of gang activity. *Radio Haïti Inter* lodged a complaint against the police inspector responsible for ill-treating Delciné, but he refused to respond to summonses from the prosecutor and from the force's internal investigative unit.

²⁵ Amnesty International, *Haiti: Human Rights Challenges Facing the New Government*, AI Index: AMR 36/002/2001, April 2001, p. 6.

²⁶ Amnesty International, *Haiti: Human Rights Challenges Facing the New Government*, AI Index: AMR 36/002/2001, April 2001, p. 6.

- On 27 November, *Radio Kiskeya* journalist Evrard Saint-Armand was reportedly arrested after attempting to report on an incident in which a young man had been killed by gunfire in unclear circumstances in Port-au-Prince. He was taken to the local police station where he was reportedly beaten by several officers, who were also said to have broken his tape recorder to prevent broadcast of the testimonies collected.
- In the year's most deadly attack, on 3 December, *Radio Echo 2000* news director Brignol Lindor was hacked to death by a mob including members of a pro-FL organization in Petit Goave. Several days before, the FL assistant mayor had called for "zero tolerance" against Lindor, whom he accused of supporting a rival party. Several of the perpetrators admitted to the murder and warrants were issued for their arrest. President Aristide dismissed the entire mayoral cartel, including the mayor and two assistant mayors, as well as the local police chief. However, there were no arrests until 9-10 February, when police arrested FL-elected local official Sedner Sainvilus, member of the Communal Section Administration. Brignol Lindor's family and friends continued to protest the failure to arrest anyone else, in spite of the confessions of a number of those implicated; on 17 February threatening leaflets were distributed anonymously around Petit Goave, warning the family and other journalists to stop drawing attention to the case or risk facing the same fate as Brignol Lindor. The leaflets were reportedly signed by 'Militant Lavalas Bases', or '*Bases militants Lavalas*.'
- A spate of targeted reprisal attacks against opposition headquarters, radio stations, journalists and leading opposition figures followed the 17 December 2001 attack by unidentified assailants on the National Palace. A *Radio Métropole* correspondent in Gonaïves were attacked in the street as he tried to cover events, and reporters in Port-au-Prince and elsewhere were threatened. Port-au-Prince stations *Signal FM* and *Caraïbes FM* were surrounded and threatened by crowds, and the latter had windows broken and vehicles damaged on their premises. According to various sources, police either were not present or did not intervene during street violence.²⁷ Other stations such as *Radio Métropole*, *Radio Vision 2000* and *Radio Kiskeya* curtailed coverage after receiving telephone threats. The *Association de Journalistes Haïtiens*, Association of Haitian Journalists, reported that nearly a dozen journalists had left Haiti out of fear of persecution following the attack on the National Palace and the subsequent reprisal attacks.

²⁷ See "Haiti: Amnesty International condemns attacks," AI Index: AMR 36/015/2001 - News Service Nr. 224, 18 December 2001.