

“Dictators Never Die”: Baby Doc Duvalier in the Dock

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In Argentina, Guatemala, Peru and other countries in the region, former dictators and many of those responsible for egregious human rights violations under former authoritarian regimes have been, or are in the process of being tried for their crimes. In Haiti, for the first time, there appears to be genuine hope that Haiti’s former dictator Jean-Claude Duvalier will face human rights charges in court. But there’s still a very difficult road ahead.

After Duvalier failed to appear at an appeals hearing regarding human rights charges on February 7, the judge rescheduled the hearing for February 21. “The hearing on February 21 could be a pivotal moment in the prosecution of Jean-Claude Duvalier,” the Institute for Justice and Democracy in Haiti’s Nicole Phillips told NACLA blogger Kevin Edmonds. “If Duvalier appears as ordered by the appellate court, it will present the first opportunity for the former brutal dictator to speak about his political violence crimes in a courtroom full of his victims and the media. If Duvalier fails to appear, the Haitian government will be under intense pressure to arrest him for violating a court order.” While Duvalier has blatantly violated his house arrest related to pending corruption charges, failure to appear again would presumably be a more flagrant disregard for the Haitian judicial system. Duvalier also must appear in his own role as an appellant; he is appealing the standing corruption charges against him.

Amnesty International and Human Rights Watch have both announced that they will monitor the proceedings tomorrow. The Inter-American Commission on Human Rights (IACHR) issued a press release today “reminding the Haitian state of its international obligation to investigate, prosecute, and punish the serious human rights violations committed in that country, and to ensure that justice operators may work with independence and impartiality.”

On January 30, 2012, Investigative Judge Carvés Jean ruled that Duvalier could not stand trial for human rights crimes, while allowing corruption charges to go ahead. The ruling shocked the human rights community, considering that Duvalier is one of the hemisphere’s more notorious past dictators, infamous for brutally crushing dissent with the assistance of the dreaded “Tonton Macoute” secret police and the Haitian army during 15 years in power. “Under the presidency of Duvalier and his Tonton Macoutes, thousands were killed and tortured, and hundreds of thousands of Haitians fled into exile,” according to Human Rights Watch.

At the time, the Office of the U.N. High Commissioner for Human Rights said it was “extremely disappointed” by the ruling. Human Rights Watch condemned the judge’s decision, saying that it “ignores Haiti’s international obligation to prosecute such crimes.” Human Rights Watch’s Reed Brody stated that “This wrong-headed decision, if upheld on

appeal, would entrench Haiti's culture of impunity by denying justice for Duvalier's thousands of victims."

Amnesty International also condemned what it determined to be "stalling" by the Haitian judiciary: "Haitian authorities at the highest level have until now shown great leniency towards Jean-Claude Duvalier, while showing contempt to the victims of human rights violations who continue to await justice and reparation."

The IACHR pointed out that "torture, extrajudicial executions and forced disappearances committed during the regime of Jean-Claude Duvalier are crimes against humanity that, as such, are subject neither to a statute of limitations nor to amnesty laws." Several human rights organizations such as Human Rights Watch, Amnesty International, and others also noted that there is no statute of limitations on crimes against humanity, and that Haiti has a duty to prosecute Duvalier under international law, including the American Convention on Human Rights.

The human rights plaintiffs filed an appeal to Judge Carvés Jean's decision, and the February 7 hearing was the latest of several over the past few months in which Duvalier was a no show.

Duvalier's defense team and supporters have responded to human rights charges with great hostility. Duvalier's lawyers and supporters disrupted a press conference by Amnesty international where Amnesty was presenting its report, "'You cannot kill the truth': The case against Jean-Claude Duvalier" in September 2011. Victims of Duvalier, many of which were present "were intimidated and harassed" and "most felt forced to leave the room due to fear for their security." Amnesty stated that the "type of pressure and intimidation which has been exerted on victims and the judicial authorities since the start of the criminal investigation against Jean-Claude Duvalier is totally unacceptable." Prosecuting attorney Mario Joseph of the Bureau des Avocats Internationaux began to receive death threats and experience various forms of harassment following Judge Carvés Jean's decision. On February 7 this month, one of Duvalier's attorneys reportedly demonstrated open contempt for the would-be plaintiffs - New York Times editorial writer Lawrence Downes wrote, "according to observers on Twitter, a Duvalier lawyer jabbed his finger at one victim and yelled, 'The victims will never be able to participate!'" As for crimes themselves, a letter that Duvalier's team presented to the judge declared Duvalier's having been forced to flee Haiti to be one of "the greatest political crimes (...) committed in this country."

"The handful of victims who have been interviewed had been subjected to intimidation by Duvalier supporters and his lawyers," Amnesty International Special Advisor Javier Zúñiga has said.

An important factor, many observers agree, is the U.S. government's response to the case, which has been consistently muted. Asked about Duvalier after his surprise return to Haiti in January 2011, then-Secretary of State Hillary Clinton hinted that Duvalier's past abuses were old news, and that trying him could hamper efforts to "stabilize" the country:

Well, we are very clear going back many years about the abuses of that regime. And certainly, we believe that his record is one of repression of the Haitian people. Ultimately, a decision about what is to be done is left to the government and people of Haiti. But we're focused on trying to maintain stability, prevent chaos and violence in this very unpredictable

period with his return, with cholera still raging, with the challenges of reconstruction, with an election that's been challenged.

The line that "a decision about what is to be done is left to the government and people of Haiti" is a position that has been restated in subsequent State Department press briefings and other fora. "What happens at this point forward is a matter for the people of Haiti. ...This is their concern, not ours," then-State Department spokesperson P. J. Crowley told reporters on January 18, 2011. "It is now up to Haitians to decide what to do," U.N. Ambassador Susan Rice said on January 20, 2011. Even more distressing, former president Bill Clinton went so far as to shake Duvalier's hand at a high-profile public event last year marking the second anniversary of the Haitian earthquake - as did Haitian President Michel Martelly.

The Obama administration's position on Duvalier stands in contrast to past U.S. government statements regarding other fallen dictators. As Human Rights Watch described in June last year, for example:

[Then Secretary of State Hillary] Clinton urged the Senegalese government to "move quickly" in bringing [former Chadian dictator Hissène] Habré to justice. "If progress is not forthcoming on efforts to extradite or prosecute, the Department of State will continue to press vigorously for expedient action by Senegal in finally holding Habré to account," Clinton said in the report.

Even worse, the U.S. government may be obstructing justice by withholding documents that could be used as evidence against Duvalier. While the U.S. did make public similar documents about former Chilean dictator Augusto Pinochet and members of Argentina's former junta, for example, prior to judicial proceedings in those countries, it has yet to take similar action that could help build the case against Duvalier. The U.S. government has also notably long refused to hand over documents regarding the former C.I.A.-linked Haitian death squad, FRAPH.

The U.S. response could signal an unwillingness to see Duvalier pay for his crimes, which might come as no surprise considering the enduring support the U.S. government showed for Duvalier during his rule, with U.S. aid to Haiti - including military training - increasing during the 1970's and 80's. When a popular uprising finally forced Duvalier to flee in 1986, the U.S. flew him out on a military plane.

The U.S. position is also ironic considering that USAID has spent \$150 million [PDF] on "governance and rule of law" programs in Haiti just since the earthquake, and helped to create the Superior Judicial Council - which has been dogged by controversy during its brief existence. Nor should Duvalier's return have caught U.S. officials off guard. A Wikileaks cable reveals that Duvalier's possible return was a concern as far back as 2006, when then U.S. charge d'affaires in the Dominican Republic Lisa Kubiske (now assigned to Honduras) "expressed USG [US government] concern over a return to Haiti of either Duvalier or [Jean-Bertrand] Aristide [the former Haitian president]. Both potentially were provocative and could complicate the ability of any new government to establish itself," The Guardian summarized the cable as saying. The cable does not mention any desire by the U.S. government to see Duvalier tried, nor any mention of possible charges whatsoever.

The Martelly administration in Haiti has also been reluctant to see Duvalier prosecuted. Martelly's connections to the Duvalier regime are well known, and Martelly has admitted to

being a former Tonton Macoute himself. Amnesty noted that as well as allowing Duvalier to take part in ceremonies to mark the second anniversary of the Haiti quake, “In October [2011], President Martelly paid a highly publicized visit to Duvalier’s home, under the pretext of national reconciliation.” More recently, the Haitian government reportedly gave Duvalier a diplomatic passport. “Several public statements from President Martelly have also hinted at pardoning Duvalier,” as Amnesty noted.

As Edmonds wrote for NACLA, “The 61-year-old Duvalier would face no more than five years in prison if convicted of embezzling public funds and other financial crimes. On the other hand, a conviction of crimes against humanity could put him away for life.”

“The Duvalier trial could be the most important criminal case in Haitian history,” Human Rights Watch’s Brody has said. As important as it is in holding Duvalier accountable for human rights crimes and finding justice for victims, its magnitude transcends even this. If Duvalier is allowed to walk free, it would demonstrate that in Haiti some people truly are above the law, and it would send a dangerous message to other rights abusers, past, present and future – of which there are many, a good number of them also notorious, like Duvalier. As Zúñiga said, “It is the whole credibility of the Haitian justice system which is at stake.”

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