



CARDH

Centre d'analyse et de recherche en droits de l'homme

Judicial Inquiry Into The Assassination Of President Jovenel
Moïse

Limits Of The Prosecution And Prospect Of A Special Court

Thematic report I

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I. Introduction

1. On July 7, 2021, between 1:30 and 2 a.m., Jovenel Moïse¹, the 58th President of Haiti, was tortured (left eye punctured, machete blows, broken arm ...), then murdered in his private residence (at Pèlerin 5) with at least 12 high caliber bullets² by Colombians³ and other foreign agents, including Mr. Joseph Vincent (55 years old), former informant of the Drug Enforcement Administration (DEA)⁴, while not even a single agent of the presidential guard corps⁵ on duty that night was injured. Mystery !!!

¹ In accordance with articles 134 (paragraphs 2 and 3) and 150 of the Constitution and 239 of the electoral decree of March 2, 2015 (Special No. 1), the mandate of the President of the Republic ended on February 7, 2021. "In the event that the elections cannot take place before February 7, the president-elect takes office immediately after the validation of the ballot and his term of office is deemed to have started on February 7 of the year of the election." (article 134-2 of the Constitution). "The President of the Republic has no other powers than those assigned to him by the Constitution." (article 150 of the Constitution). "In order to harmonize constitutional time and electoral time, in case the elections are organized outside the prescribed constitutional time, for whatever reason, the mandates of elected officials expire as follows: a) The President of the Republic: on February seven (7) of the fifth year of his mandate regardless of the date of his entry into office (..) "(article 239 of the electoral decree).

² According to the finding of the Deputy Justice of the Peace of Pétion-Ville, Carl Henry Destin, 12 bullet holes from a high caliber weapon and 9 mm were noted on the body of the president. "The president's office and bedroom were ransacked. We found him lying on his back, blue pants, a white shirt smeared with blood, his mouth open, his left eye gouged out. We saw a bullet hole in his forehead, **one in each nipple, three in the hip, one in the abdomen.**"

³ At a press conference in the afternoon of July 8, 2021, the Director General of the PNH affirmed that the armed commando which assassinated President Jovenel Moïse was composed of twenty-six (26) Colombians, according to Colombian Defense Minister Diego Molano.

⁴ In a statement to CNN, the DEA confirmed that one of the suspects in the assassination of the Haitian President Jovenel Moïse was a former DEA confidential source. After the assassination, he contacted his handler at the DEA. An official assigned to Haiti urged him to surrender to the Haitian authorities. A US State Department official provided information to the Haitian government. The government then arrested the suspect and another. Translation of TVA Nouvelle (Canadian channel).

⁵ Three police units ensuring the president security: the General Security Unit of the National Palace (USGPN), headed by Dimitri Hérard, responsible for securing the first perimeter of the palace, the president's residence and its route; the CAT-TEAM, headed by Chief Inspector Amazan Paul Eddy, responsible for protecting the life of the president and his family; the Presidential Security Unit (USP), headed by Jean Laguel Civil, which secures the President's physical person and his family.



2. Initial reports suggested that his wife, Martine Moïse, who had been shot several times, was rushed to the hospital in Florida after receiving first aid in Haiti. After having had access to the report of the justice of the peace, the Center for Analysis and Research in Human Rights (CARDH) was able to observe that she had received a bullet in her right arm⁶, which was confirmed during her return to Haiti on July 17 to organize her husband's funeral set for July 23 in Cap-Haitien (North).



Martine Moïse disembarks the plane at Airport T. Louverture in Port-au-Prince.

3. On July 8, CARDH⁷ expressed its sympathies to the M troubled by this odious act: a President of the Republic assassinated in these conditions while there is the presence of a United Nations mission in the place since April 30, 2000⁸. Justice must be done in the name of international morality and justice. In addition, since human beings are equal in dignity and rights, this assassination must be denounced, as the massacres and killings committed in the country since⁹ 2018.¹⁰

⁶ "I heard noises and I took refuge in my little brother's room, then in the toilet. After a few hours I heard the voice of my mother, Martine Moïse. When I got to the bedroom, I noticed that she had an injured right arm. Then I heard people say, police, we're here to help you. They took my mom to the hospital. I came back to take clothes for my mother" (Report of findings: Jomalie Jovenelle Moïse, born April 21, 1997, daughter of the president).

⁷ CARDH "Assassination of the de facto President Jovenel Moïse: CARDH revolts and demands justice!," July 8, 2021.

⁸ The United Nations Integrated Office in Haiti (BINUH) (Security Council Resolution 2476 of June 25, 2019) replaced the United Nations Mission for Justice Support (MINUJUSTH) (Resolution 2466 of April 12, 2019) succeeding the United Nations Stability Mission in Haiti (MINUSTATH) installed on April 30, 2004 (Resolution 1542). See: Le Nouvelliste: "MINUJUSTH: CARDH examines and positions itself," 24 Oct. 2017. <https://lenouvelliste.com/article/177837/minujusth-le-cardh-examine-et-se-positionne>.

⁹ One could, among others, quote the massacres of: La Saline, Cite-Soleil, Bel-Air, Martissant, Delmas 32. See: CARDH: "A proto state in the Haitian state? More than 150 assassinations and nearly 200 kidnappings for the month of June," June 6, 2021. <https://cardh.org/archives/1970>.

"State of Human Rights in 2020 Crime Rise - Legal Dismantling - Continued Human Rights Violations," January 19, 2021. <https://cardh.org/archives/1513>.

"The State of Human Rights in 2019: The Black Year! Additive Note 2020 ", February 18, 2020. <https://cardh.org/archives/78>.

"La Saline Massacre: Human Rights Violations and the Need for Humanitarian Intervention," December 10, 2018. <https://cardh.org/archives/651>.

¹⁰ According to article 2 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights."



4. In its first reflection published on July 19, CARDH¹¹ underlined that “several investigations overlap: the Port-au-Prince prosecutor's office has delegated power to the Central Directorate of the Judicial Police (DCPJ)¹² and has, at the same time, invited personalities. However, the police investigation and the judicial investigation do not necessarily follow the same logic. In addition, the prosecution acted outside the flagrante period (24 hours).¹³
5. On July 23, **the 19 Red Questions (QR)** were developed and published with a view to developing approaches, understanding certain gray areas in the assassination of President Jovenel Moïse and periodically producing analysis.
6. Based on questions 2, 3, 4 and 5¹⁴, this first thematic report analyzes in the light of the law the first phase in the investigation, the prosecution, which, already, would confirm that in the current state of the Haitian justice¹⁵ only a special tribunal can carry out the trial.

¹¹ CARDH: "Assassination of the de facto president Jovenel Moïse, CARDH follows the investigation and will periodically make recommendations," July 19, 2021.

¹² Immediate auxiliary of the judicial authorities (prosecutors and their substitutes near the tribunals of the first instance, investigating judges and justices of the peace), the Central Directorate of the Judicial Police (DCPJ) has specific attributions: to note violations of the laws criminal proceedings, to draw up a report and establish the circumstances as well as the evidence: (1) to search for the perpetrators of crimes, (2) to monitor and search for criminals operating or taking refuge in the national territory, (3) to cooperate, as necessary, with foreign police organizations, (4) to fight against smuggling and illicit drug trafficking, (5) to provide any information likely to prevent or repress violations of order and political, economic and social stability within the framework of the laws of the Republic.

Its powers are exercised through the following directorates: the Directorate of Criminal Affairs, the fight against banditry, pimping and illicit drug trafficking (1); the Intelligence Directorate (2); The Department of forensic science and judicial reconciliation (3); The Identification and Central File Directorate (4); the Directorate of Juvenile Delinquency (5).

(Law of November 29, 1994 on the creation, organization and functioning of the Haitian national police, Monitor # 103, December 28, 1994).

¹³ CARDH: "Assassination of the de facto president Jovenel Moïse, CARDH is following the investigation and will periodically make recommendations", op.cit.

¹⁴ Why has the crime scene and its outskirts not been secured (2)? Why in the 48 hours which followed the assassination, justice was not set in motion, in particular through public action (3)? Why were the officers and officials of the General Security Units of the National Palace (USGPN), Presidential Security Unit (USP) and Counter Assault Team (CAT-TEAM) not immediately arrested? (4) Why was the responsibility of the Ministry of the Interior and Local Authorities (MICT), including the immigration and emigration service, never mentioned? (5). CARDH: “Assassination of Haitian President Jovenel Moïse, Questions Rouges”, July 23, 2021.

¹⁵ CARDH "Assassination of the de facto President Jovenel Moïse, CARDH is following the investigation and will periodically make recommendations", op.cit. by. 9.

II. Review of the pursuit phase

1. Reminder of the three phases of a criminal trial

7. A crime committed immediately gives rise to a need for justice. Three interdependent procedural phases must be followed to achieve this: (1) the **prosecution** by the government commissioner/prosecutor, equivalent to the public prosecutor in France or the United States for example, (2) the **instruction** by the investigating judge, (3) the **trial** by the criminal court.
8. As the law is a procedural discipline, each step involves a procedure which must be followed to the letter, otherwise it will negatively affect the trial. The representative of the People and the head of the prosecution, the prosecutor is the main party in the criminal trial, thus, he bears the burden of proving through evidence the culpability of the accused¹⁶
9. The case on the assassination of President Jovenel Moïse was transmitted to the dean/chief judge of the civil court of the first instance in Port-au-Prince, Judge Bernard Saint-Vil, on August 4 for investigation. Refused by several investigating judges, the case was accepted by Judge Mathieu Chanlatte on August 9, who was subsequently recused himself from the case for personal convenience on August 13¹⁷. CARDH intends to return to the prosecution phase in order to produce the first necessary comments.

2. Actions taken in the prosecution phase¹⁸

2.1. By the Prosecutor

10. In the 48 hours following the assassination of President Jovenel Moïse, the prosecutor was completely absent. He did not go to the crime scene. But he subsequently posed the following actions.
 - 2.1.1. Warrants issued
11. On July 12, five (5) arrest warrants were issued against Gerard Forge Janvier, Gerald Bataille and Paul Denis for murder, attempted murder and armed robbery, and Samir

¹⁶ The government prosecutors are responsible for searching and prosecuting all offenses or crimes of which to his knowledge belong to the competence of the civil courts presiding in correctional or criminal (article 13 CIC)

¹⁷ Letter from the judge to the dean of the court, Bernad Saint-Vil.

¹⁸ A non-exhaustive list.



Handall and Line Baltazar for murder and attempted murder against the person of the President of the Republic, Jovenel Moïse.

12. On July 23, an arrest warrant was issued against the magistrate of the *Supreme Court*, Wendelle Coq Thélot, for assassination and armed robbery against the person of Jovenel Moïse. This warrant was received by the DCPJ on July 25.

2.1.2. Personalities invited to appear to the office of the prosecutor

13. The following personalities were invited to appear before the prosecutor:

• *Steven Benoît (former senator and political leader), Youri Latortue (former senator and political leader), Dimitri Vorbe and Jean Marie Vorbe (businessmen) and Réginald Boulos (businessman and politician), on Monday July 12 between 10 and 11:30 a.m.*

• *Jean Laguel Civil (General Coordinator of the Presidential Security) and Paul Eddy Amazan, Principal Inspector and head of CAT TEAM, on Tuesday, July 13;*

• *Pierre Osman Léandre (Commissioner of Police) and Dimitri Hérard (Commissioner of Police) respectively responsible for the Presidential Security Unit (USP) and the General Security Unit of the National Palace (USGPN), on July 12 and 14.*

2.1.3. Delegation of power to the DCPJ

14. On July 8, the prosecutor delegated power to the Central Directorate of Judicial Police (DCPJ) for a period of 15 days to investigate the assassination of President Jovenel Moïse.

2..2. Police Actions

2.2.1. Colombians arrested

15. The commando that assassinated the President of the Republic was formed of twenty-two (22) Colombians¹⁹, four (4) Haitian police officers.

¹⁹ At a press conference on the afternoon of July 8, 2021, the Director General of Police, Mr. Leon Charles, claimed that 26 Colombians were involved in the assassination. See for example: "Le Nouvelliste Assassination of the president: 11 of the 17 mercenaries arrested by the PNH had taken refuge at the Taiwanese embassy."

<https://lenouvelliste.com/article/230307/assassinat-du-president-11-des-17-mercenaires-arretes-par-la-pnh-setait-refugies-a-lambassade-de-taiwan>

- *Eighteen (18) Colombians were arrested on July 7 and transferred to the National Penitentiary on August 4.*

- *Three (3) others were killed on the day of the murder,*

- *One (1) other is still on the run.*

2.2.2. Haitian Americans arrested

16. Four (4) Americans of Haitian descent were arrested.

- *James Solages, 35 years old,*
- *Joseph Vincent, 55 years old,*
- *Christian Emmanuel Sanon, 63 years old.*

N.B. The fourth name will be published in the next report.

2.2.3. Twenty two (22) police officers summoned then arrested²⁰

17. **Twenty-two (22)** policemen were summoned and then taken into custody, some for breach of their responsibilities, others for alleged involvement in the assassination.

18. They are, among others: William Moïse, Osmann Pierre Léandre, Jean Laguel Civil, Ronald Guerrier, Alphonse Sadrac, Jean Arly, Delica Phanec, Frantz Louis, Laurent Jude, Ernest Germain, François Rony and Cleantis Louissaint (CARDH will present the full list in a future report).

19. Four (4) policemen were directly involved in the assassination of the president. They have accompanied the Colombians since their arrival in Haiti and were present at the scene on the day of the crime. They are: William Moïse, Bonni Grégoire, Clifton Hyppolite, and Jean-Elie Charles²¹.

In a conversation with the leadership of the PNH immediately after the publication of the report, the number 26 was updated downward to 22, “specifically that after collecting the data, 22 Colombians were involved.” CARDH carried the clarification and republished the report.

²⁰ Press conference given by the spokesperson for the police, Mrs. Marie-Michelle Verrier, on July 30, 2021 (DG-PNH, Clercine).

²¹ Ibid.

III. Analysis et conclusion

20. The first phase of the investigation into the assassination of President Jovenel Moïse, the prerequisite for the related criminal trial, has serious weaknesses. The prosecutor, the chief, the administrator, the coordinator and strategist of the judicial investigation²² was absent for 48 hours after the assassination.
21. This is the initial phase to lock down and absolutely control the crime scene and take all the necessary clues, but also to arrest all the suspects (police officers, political authorities and ordinary citizens) and invite those who can assist in the finding of the judicial truth. As the main party to the trial and the accuser, the prosecutor defines his strategy and is the axis around which all judicial cooperation must take place.
22. The prosecutor can only act within 48 hours which constitute the flagrante period²³. According to article 31 of the Code of Criminal Investigation (CIC): " The offense which is currently being committed, or which has just been committed, is a flagrante delicto. The following will also be deemed flagrante offense: the case where the accused is pursued by public outcry and the case where the accused is found seized with effects, weapons, instruments or papers making it presumed that he is the author or accomplice, provided that it is in a time close to the offense. "
23. Within this period, the prosecutor may arrest an individual, after ascertaining the commission of an offense, and, where appropriate, make arrests and issue notices/orders to appear. Thus, the Code of Criminal Investigation governs the investigation procedure as well as the acts to be taken by the prosecutor for the manifestation of judicial truth.

²² The prosecutor is the head of the judicial police whose mission is to "research crimes, misdemeanors and infractions, gather evidence and deliver adult or juvenile delinquents to the courts, or special jurisdictions responsible for determining and fixing the duration of their treatment in penitentiary institutions or re-education centers provided for by law. " (article 8). The article continues, "The judicial police will be exercised, according to the provisions which will be established, by the Public Prosecutor's Office, by the investigating judges, by the justices of the peace, by the agents of the rural and urban police and by the social police officers from the Haitian Institute for Social Welfare and Research. They will be competent to verbalize and carry out any act of information in matters of flagrante. They will take all measures likely to ensure the stability of the family and the sustainability of the social order and, if necessary, will bring before the courts those who violate the laws relating to good morals. "

²³ Haitian law does not define the period of flagrante, but, in practice, judges, lawyers and jurists use the 48 hours provided for by the Constitution for appearance before the judge of legality and freedoms (the dean). "No one may be kept in detention if he has not appeared within forty-eight (48) hours following his arrest, before a judge called upon to rule on the legality of the arrest and if this judge has confirmed the detention by reasoned decision. "(Article 26 of the Constitution)



24. On the evidence and the exhibits, article 25 of the CIC specifies: "the prosecutor will seize the weapons, and all that appears to have been used or to have been intended to commit the crime or the misdemeanor, as well as of all that will appear to have been the product of it, finally of all that can be used for the manifestation of the truth; he will call on the accused to explain himself about the things seized which will be represented to him; he will draw up a report, which will be signed by the accused, or which will bear the mention of his refusal. "
25. On evidence's safeguard (safekeeping place, label, seal, etc.), Article 28 continues in these terms: "The seized objects will be closed and sealed, if possible; or if they are not capable of receiving characters of writing, they will be put in a vase or in a bag, on which the government prosecutor will attach a strip of paper which he will seal with his stamp. "
26. On the arrest of the accused, article 30 stipulates: "In the case of flagrance, the prosecutor will seize the accused present, against whom there are serious indications, and, after having questioned them, will issue the warrant of committal against them. If the accused is not present, the prosecutor will issue an order for him to appear: This order is called an arrest warrant. "
27. On the obligation of having forensic doctor (s) when there is a violent death, article 34 underlines: death whose cause is unknown and suspect, the prosecutor will be assisted by one or two doctors, surgeons, or health officers, who will report on the causes of death and the condition of the corpse."
28. On the obligation to immediately seize the investigating judge. Article 35 specifies: "The prosecutor shall immediately transmit to the examining magistrate the reports, acts, documents and instruments drawn up or seized as a consequence of the preceding articles, to be carried out as will be said in Chapter VI. "Investigating judges"; and the accused will remain under the control of Justice in a state of arrest. "
29. Pass this period, only the examining magistrate is competent to issue warrants, qualified moreover as orders to be executed at the behest of the prosecution (warrants/orders to appear, transport, arrest and committal) under article 77 and following of the Code of Criminal Procedure (CIC).
30. Haitian law does not allow the prosecutor to extend his actions even when the alleged person (s) is / are pursued by public clamor or after he has noted the commission of the offense (find the presumed person (s) with sufficient and concordant objects or clues), while under these conditions, the public prosecutor in France can continue his flagrance investigation (48 hours) for up to eight days.



31. Qualified as flagrant crime or misdemeanor is the crime or misdemeanor which is currently being committed, or which has just been committed. There is also a flagrant crime or offense when, at a time very close to the action, the suspected person is pursued by public clamor, or is found in possession of objects, or presents traces or clues, suggesting that he participated in the crime or the misdemeanor. Following the discovery of a crime or a flagrant offense, the investigation carried out under the control of the public prosecutor under the conditions provided for in this chapter may continue without interruption for a period of eight days. When the investigations are necessary for the manifestation of the truth for a crime or an offense punishable by a penalty greater than or equal to five years' imprisonment cannot be postponed, the public prosecutor may decide on the extension, under the same conditions, of the investigation for a maximum period of eight days. "
32. Those arrested in the investigation into the assassination of President Jovenel Moïse were questioned in the absence of their lawyer or witness. They did not appear before their natural judge to rule on the legality of their arrest, a violation of the Constitution particularly concerning respect for individual freedoms.
33. No one can be kept in detention if he has not appeared within forty-eight (48) hours following his arrest, before a judge called to rule on the legality of the arrest and if this judge has not confirmed detention by reasoned decision. In the event of an infraction, the accused is brought before the justice of the peace who decides definitively. In the event of a misdemeanor or felony, the accused may, without prior permission and on simple memorandum, appeal to the dean of the court of first instance of the jurisdiction who, on the conclusions of the Public Prosecutor's Office, rules at the extraordinary, hearing pending, without postponement or rotation, all cases ceasing on the legality of the arrest and detention " (article 26 of the Constitution).
34. At the procedural level, these first elements indicate that the prosecution was carried out in violation of the Constitution, the Code of Criminal Procedure and international human rights instruments. Criminals can be released at any time, reports and exhibits, essential to the trial, can be excluded during its progress ... All this will affect the course of the trial.
35. In addition, the president's wife, Martine Moïse, eyewitness, was not interviewed by the government commissioner, all the more so, she publicly declared during the funeral that her husband's killers are circulating in the country.
36. However, it should be noted that it would be difficult for a prosecutor to carry out any prosecution within the flagrance period. Especially since it is the case of a president assassinated under the complex conditions outlined above: planning the assassination



on American and Dominican territories, perpetrators are Americans (of Haitian origin), former US intelligence agents; Colombian military retirees ...

37. France has understood that it is necessary, in certain situations and for certain break-ins, to extend the effects of the pursuit to eight days or more (in terrorism cases, for example).
38. In addition, the prosecutor, head of the prosecution and representative of the State for which the Cabinet of Instruction works, especially in criminal matters, is a civil servant agent of the Executive, without a mandate, where the Minister of Justice is the hierarchical superior. Could he exercise his powers to the fullest?
39. However, the Haitian Constitution makes Justice one of the three independent powers which form the State and exercise national sovereignty on behalf of the citizens.
40. Yet the Haitian Constitution makes Justice one of the three independent powers that form the State and exercise national sovereignty on behalf of the citizens.
41. The Superior Council of the Judicial Power (CSPJ), created by the law of 13 November 2007, does not resolve the problem, given that the prosecutors, including the bailiffs and clerks, are still under the authority of the said minister and do not have a mandate or defined term.
42. In relation to the need for justice evoked by the Center for Analysis and Research in Human Rights (CARDH), without touching on other fundamental questions intrinsic to Haitian justice, a special tribunal will allow this trial to be carried out. Its composition, procedure, installation and geopolitical issues will be the subject of further reflection.