

Report on Killings in the Haitian National Penitentiary

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Introduction

On December 1, 2004, an incident in Haiti's National Penitentiary in Port-au-Prince left at least ten prisoners dead. The Haitian government claimed that most prisoners were killed by other prisoners, and that the police used reasonable force in justified self-defense. Other witnesses, including former and current prisoners and people who live or work near the prison, claim that the police used massive, lethal force to confront a non-lethal prison protest, and continued to execute prisoners long after the protest had been terminated. Witnesses claim that sixty or more prisoners were killed.

Evaluating these conflicting claims is difficult because police have prevented journalists and independent human rights groups from speaking to prisoners, and have not released a list of those killed or injured, even to the prisoners' families. A preliminary investigation by the Institute for Justice and Democracy in Haiti (IJDH) did find consistent, credible testimony that the December 1 incident included the unjustified use of lethal force on unarmed prisoners by officials of the Haitian prison department (Department des Affaires Penitenciaires, or DAP) and police department (Police Nationale d'Haiti, or PNH) which led to many more deaths than initially reported. The investigation also revealed a widespread official effort to obscure the truth about the massacre by issuing untrue statements, intimidating witnesses and refusing to disclose information.

IJDH's preliminary investigation included interviews with four direct witnesses to the events of December 1, interviews with officials of the Interim Haitian Government (IHG), visits to the National Penitentiary (PN), the state morgue and hospital, a review of the IHG public statements, and interviews with witnesses in the area surrounding the PN. One former prisoner was able to provide an extensive eyewitness account of what happened; other witnesses provided more limited accounts that corroborated the principal witness account in important respects. In order to conduct a full investigation, it would be necessary to interview all witnesses, including several prisoners, witnesses outside of the penitentiary, and authorities present at the time of the incident. Investigators would also need access to all relevant records, including those of the hospital, the morgue the police and the DAP. To this point, only the National Coalition for Human Rights (NCHR) has been permitted access to the penitentiary and to official records.

The primary witness, Ted Nazaire, was arrested in early August for fighting with his brother.

He was never formally charged, his case was dismissed on December 2, and he was released on Friday, December 3. Nazaire was one of 20 prisoners held in Cell 14 of the Titanique cell-block, a large 3-story block of cells in the center of the PN.

Other prisoners were interviewed at the State University Hospital of Haiti (HUEH), where they were brought for treatment of gunshot wounds sustained during the December 1 incident. The interviews were limited because police officers either forced investigators to leave or listened in on the interviews. IJDH investigators were able to interview people who lived and worked in the vicinity of the PN, investigative journalists, workers at the hospital and one DAP employee.

Background

The events of December 1 occurred in a context of systematic disregard for the rights of arrestees guaranteed by Haiti's Constitution and international human rights law. Although Haiti's jails were emptied during the insurgency that led to the IHG's installation on February 29, 2004, they are now so overcrowded that some prisoners must wait for a turn to sleep on the cell floor. Many of the prisoners were arrested illegally, and the Catholic Church's Justice and Peace Commission estimates that there are over 700 political prisoners systemwide. Shortly after December 1, a chalkboard inside the PN indicated that of 1041 people held in the Penitentiary, only 22, or 2%, had been convicted of a crime. Most of the remaining 98% have never been brought before a judge and therefore have little hope of release without paying a bribe, no matter how weak the case against them.

Haitian and international human rights groups have criticized the IHG for widespread detention of political opponents, and for maintaining unsatisfactory prison conditions. Some political prisoners are prominent officials or supporters of the ousted constitutional government, but the vast majority are grassroots activists and residents of poor neighborhoods known to oppose the IHG. IJDH reviews of prison records reveal that most prisoners in the PN are charged with either "association de malfaiteurs," a vague conspiracy or gang-affiliation charge, or with possession of an illegal weapon. In mid-November, UN Secretary-General Kofi Annan issued a public statement urging the IHG to release its political prisoners. Other world leaders have echoed this call, and insisted that the IHG either pursue formal charges against arrestees or release them.

IJDH has observed deteriorating conditions in the PN over the past several months. Cells have become increasingly overcrowded with some holding as many as two or three times the intended capacity. Many prisoners must sleep on the floor, and some do not have mattresses or sufficient space to sleep lying down. Sanitation facilities are inadequate, and prisoners are not permitted sufficient time to bathe and use washroom facilities. Food quality and quantity is poor, prisoners complain that the food is rancid and the water causes skin infections. Recreation time has decreased and the IHG has terminated its predecessor's educational programs. Family visits for most PN prisoners had been prohibited for several weeks before the December 1 incident, and have not resumed. IJDH has visited prisoners in Titanique and other PN cellblocks with severe injuries, including gunshot wounds, who have not received proper medical attention.

The United Nations Development Program (UNDP) warned authorities two weeks before the massacre that if corrective measures were not taken to address prison conditions, a riot would occur. The report's author, Regis Charron, told the Toronto Star that, "[p]ressure was going up. I told them that at one point the system will break down, you will have

disruption, riots, problems. Charron stated that prison authorities failed to respond to this warning. His predecessor at UNDP's prison program in Haiti, Jacques Dyotte, resigned in November after the IHG refused to accept help from the UN and Canada to improve PN conditions.

The December 1 Incident: Conflicting Versions

PN officials and prisoners concur that the December 1 incident was sparked by a prisoner protest against detention conditions, the failure to bring prisoners before judges, and the prison officials' threat to transfer PN inmates to other prisons. They sharply diverge on the extent to which the PN authorities and police used lethal force to respond to the protest, the justification for the use of force, and the number of prisoners killed.

A. Interim Haitian Government Version

The PN's Director, Inspector Sony Marcellus, told IJDH that a riot began on the first floor of the Titanique cell-block during a search for contraband. Marcellus stated that prisoners were plotting an "invasion" to protest conditions of detention and that they had been stockpiling improvised weapons. He produced a box approximately one cubic foot in size containing dull knives, razor blades, and toothbrushes with filed edges, that he stated were confiscated during the search. Marcellus asserted that during the search of Cell 24, inmates began attacking prison guards.

In an interview with the Haitian paper *Le Nouvelliste*, Fritzner Pierre, the Deputy Director of DAP, claimed that prisoners used cauldron covers to break open cells and then ignited mattresses and other objects in their cells, in order to generate chaos in the prison. Pierre cited the imminent transfer of some detainees as a reason for this riot. In the statement, Pierre said seven prisoners had been killed. *Le Nouvelliste* later reported an additional person had died in the hospital, and the PNH announced two more after that, bringing the death toll to 10. Police spokesperson Gessy Cameau Coicou said most injuries and deaths were caused by prisoners using improvised weapons against other prisoners who refused to participate in a prison "mutiny." NCHR also reported that some of the injuries were inflicted by other prisoners.

Justice of the Peace Berge O. Surfus made a request to the morgue, dated December 1, 2004, requesting the transportation of the cadavers of seven persons-Herve Jean-Jacques, Raphael Lorenzo, Icredet Pierre, Luxamar Wilfred, Fanel Pierre, and two unidentified persons-to the morgue. The request is deliberately vague: it does not indicate the location, time, or circumstances of the deaths of these persons, its time of issue, or where the bodies could be found, or the location or time at which it was issued. Morgue records indicate that seven cadavers were received on December 1. The IHG has so far refused to release the names of the prisoners killed in the incident, and prisoners' families are not allowed to see prisoners in jail or otherwise confirm that they are still living.

One PN official, who spoke with IJDH on the condition of anonymity, indicated that more than seven prisoners had been killed during the incident, but would not give an estimate of how many. He refused to say who was responsible for the deaths.

B. PN Prisoner Version

Witness Nazaire reported that a spontaneous prisoner protest broke out in the Titanique

cell-block, after authorities informed prisoners there that some who were “belligerent” would be transferred to other prisons, notably Mirebalais. Prisoners verbally protested this announcement, as well as their prolonged detention without ever being sent before a judge. Nazaire stated that at the time of the announcement, approximately 11 prisoners who were responsible for bringing food to their cells were outside of their cells for meal service. One of them, named “Michael,” a prisoner in cell C16 who believed he was on the transfer list, warned the guards that if he were transferred he would “make Titanique hot.”

Soon a disturbance broke out. Witness reports are not clear on whether there were only verbal threats, or if prisoners began throwing objects or engaging in other violence from their cells. But all prisoners deny that lethal force was used against guards. Two DAP guards fled, but one remained in the area. The prisoners who were outside of their cells, including Michael, seized the remaining guard and confiscated his nightstick, but according to Nazaire, did not harm him. Four prisoners then broke open the locks of all of Titanique’s cells with the heavy covers of cooking cauldrons. Prisoner leaders instructed all prisoners to leave the cell block. The entire population of Titanique vacated their cells and filtered into the PN’s courtyard.

Nazaire stated that a group of prisoners then advanced in the direction of the Isolation block, where high-profile political prisoners are held. They broke the locks on one of the cells in the unit, seized a person they believed to be a foreigner, and held him hostage to protect themselves against abuse by guards. Nazaire stated that most prisoners remained in the courtyard, during which time DAP officers entered the courtyard and sprayed teargas at them. Some prisoners had advanced further in the direction of the front gate, to an area where deportees from the U.S. are held.

Nazaire reported that masked police officers arrived at the prison late in the afternoon after the protest had begun, and moved into position at the front of the entrance to the cell blocks and on the catwalk above the prison. According to Nazaire, they first opened fire at one of two persons holding the “foreigner,” hitting one of these prisoners in the groin area. At this point, all prisoners including Nazaire began to run down the hallway. Nazaire described being shot at by police officers in this area as he ran for cover.

Nazaire reported that some prisoners were struck by bullets and incapacitated, while others began running back towards Titanique. Some reentered cells there. Others sought refuge in Isolation and other prison areas. Nazaire recounted that he was able to hide in a small area under a stairwell attached to Titanique that is used to store mops. He explained that he lay in this area on his stomach with another prisoner on top of him, and both were able to hear clearly and to see some of the ensuing events.

Nazaire reported that armed police officers pursued fleeing prisoners into the Titanique cell-block. He alleged that several prisoners were forced outside of their cells, and that approximately 15 prisoners from the first floor were summarily executed outside of the cell block, and that others on the second and third floors were shot in their cells. Nazaire heard shooting from above, and reported seeing bodies dragged down the stairs from these floors.

Nazaire stated that some prisoners lit mattresses on fire in order to protect themselves from being attacked. He insisted that mattresses were lit on fire as a protective measure after the shooting began, not before. His account was corroborated by witnesses from the area around the PN, including a journalist from Radio Megastar who observed the events from a

building that looks down on the prison. These witnesses state that they noticed smoke emerging from the penitentiary after shooting began, rather than before.

Nazaire and other prisoners interviewed deny that any prisoners were killed by other prisoners. This assertion is confirmed by evidence at the General Hospital and the state morgue. Morgue personnel told a Reuters correspondent that all of the bodies that came to the morgue from the PN following the December 1 incident had bullet wounds, and that none had been killed with improvised weapons. The Reuters correspondent saw seven bodies in the morgue that were listed as prisoners killed in the December 1 incident, and the four he was able to inspect all showed bullet wounds. Neither IHG officials nor prisoners have reported that the prisoners used guns during the incident.

Nazaire reported that after the shooting stopped, prisoners were forced to collect dead from other floors and move them down the stairs of the prison and out of the penitentiary. They were then forced to clean up blood in the cell-block. Cadavers were loaded onto wheelbarrows which made multiple trips to dispose bodies. Nazaire estimated that he saw more than 60 bodies removed from the Titanique cell-block. He reports seeing three ambulances brought into the PN courtyard after the shooting had concluded, that were filled with bodies from the wheelbarrows. He reported seeing a fourth ambulance filled with bodies the next day.

A second prisoner interviewed separately by the IJDH during a brief visit estimated that more than 60 prisoners were killed by the police. Another testified that he personally saw the bodies of 20-25 dead prisoners, but believed that more had died.

C. Other Witnesses

Other witnesses outside of the PN provided information on key details of the incident, especially the number of people killed. Although most of these statements could not be independently verified or investigated, and they are not all consistent on all details, they collectively support a belief that many more than ten prisoners were killed during the incident.

One witness in the PN area reported seeing three ambulances leaving the PN on the night of December 1. Another witness, who spoke on the condition of anonymity, claims to have participated in the removal of several bodies from the PN late on the evening of December 1. He reported that about 11 PM on December 1, three ambulances arrived at the PN, and were loaded up with bodies. They traveled with a police escort to a dumping ground north of the city, where they deposited the bodies. Each ambulance made three trips.

Radio Megastar aired the reports of two prisoners' relatives who stated that they came to the prison in the days after the incident to bring food. They were handed the prisoners' belongings, usually a sign that the prisoner had died. They went to look for cadavers in the morgue, but could not find them. Several family members interviewed by IJDH stated that they have not seen their relatives inside of the prison and after two weeks had no information of their status.

Investigators from NCHR, the only investigators allowed full access to the prison following the incident, reported that seven prisoners were killed and 50 were injured, 14 of them with serious gunshot wounds. Residents in the area near the prison reported that late in the afternoon of December 1, after they had heard shooting from the PN, they saw several

police officers dressed in black arrive in the area of the prison on Rue du Centre, Rue de la Republique, and Rue de la Reunion.

Witnesses from the area stated that heavy shooting began sometime in the period of 4-5:30 pm and lasted until sometime between 7-9 pm. They described very heavy gunfire during this period. When asked to describe the type of gunfire, some made sounds that suggested automatic weapons. Some witnesses described pauses in the gunfire, others described the shooting as continuous.

The offices of Radio Megastar, in a high building located on Rue de la Reunion, have a view inside the PN from above. Radio Megastar journalist Saby Kettny reported that at around 4 pm, he first heard shooting from the PN area, but was not at the station at the time. He described a “great panic” and shooting in the streets in the PN area at about 4 PM. He saw police officers from special units in the area by 5 PM.

Kettny returned to the Megastar offices, where he could see inside the PN. He saw guards on the cat-walk of the prison shooting in the direction of prison cells. “When I was above, they were shooting at the direction where prisoners were staying,” Kettny reported. He could not see down to the bottom of the PN and did not see any bodies. He could hear crying as shots were fired and heard heavy gunfire for extended periods, including automatic weapons fire.

Impeded Investigations

IHG officials have systematically impeded independent investigations of the December 1 PN massacre by making untrue statements, refusing to release information and intimidating witnesses.

Nazaire reported two separate incidents of intimidation. On the night of December 1, two men Nazaire believe to be recently terminated prison guards, brutally beat him in the PN. During the attack, they asked him what he had seen earlier that day. He has extensive injuries including lacerations on his arms and legs, a severe injury to one ankle, baton marks on the back, several bumps on his head, and a swollen eye. After a judge dismissed the case against Nazaire, PN officials threatened him, telling him that if he spoke to the press he would have no place to hide and that they knew where he lived. On several occasions following his release, threats were made against his life. He went into hiding, and on the night he left his home, armed men wearing civilian clothing came to his home at 9:30 pm and made threats against him. Nazaire remains in hiding and his family has been forced to leave their residence.

Wounded prisoners in the hospital are kept under close watch by police officers. Each time IJDH investigators attempted to speak with a prisoner, the police either forced them to leave or insisted on listening in to the interview. Witnesses at the hospital emergency room reported that even doctors were not allowed to treat wounded prisoners without police supervision. As late as December 14, three guards were posted in the main room of the hospital to guard prisoners there.

As of December 15, no human rights organizations other than NCHR had been permitted access to the interior of the prison. Only one foreign journalist had been allowed in, and his access was restricted.

In a December 8 press conference, Interim Prime Minister Gerard Latortue announced that an independent investigation would be opened into the December 1 incident, “We have to know the truth.” Chief Prosecutor Daniel Audain also called for an investigation, and there are reports of commissions of inquiry established at both the DAP and the police internal affairs office. But three weeks after the incident, all these investigations have failed to yield even a list of prisoners killed on December 1. The mother of one prisoner, whose name appears on the justice of the peace’s list of those killed in the massacre, has not been told her son’s status. Hundreds of families continue to wait in front of the prison without any information about their loved ones inside.

Conclusion

IJDH’s preliminary investigation of the December 1 prison killings reveals serious inadequacies and inaccuracies in the official Interim Haitian Government’s account of the violence. The failure to correct these inaccuracies, to provide basic information to victims’ families or to allow investigations by journalists and independent human rights groups indicates a determined policy to conceal the truth. In this context, it is unlikely that the IHG will conduct a credible investigation of the incident.

Accordingly, IJDH calls for an independent investigation by the UN, including a) a prompt autopsy for all prisoners killed; b) forensic medical exams of all injured prisoners and guards; c) independent, exhaustive interviews with witnesses, including prisoners, former prisoners, prison guards and police, that include confidentiality protections for those who desire it; and d) examination of all relevant records, including electronic and paper records at the PN, the morgue, the hospital and police headquarters. Journalists and human rights groups should be provided access to these same materials.

The investigation should determine the total amount of prisoners killed, and people injured. It should also assess the relative percentage of casualties inflicted by prisoners and by prison guards and police. It should examine the justification and reasonableness of the IHG’s use of lethal force.

The tragedy of the PN massacre is compounded by the fact that most of the prisoners should not even have been in the PN in the first place. Statistics predict that for most of the dead, their assassination was the last of a long string of human rights violations. Only one in fifty is likely to have actually been convicted of committing a crime. The vast majority were likely arrested illegally without a warrant and detained on vague charges with no evidence in their file and no chance of judicial review of the detention.

Statistics predict that most of the prisoners killed were brought to the PN from Cité Soleil, Bel-Air, Fort National, Martissant and other poor neighborhoods of Port-au-Prince, where they and their neighbors rarely enjoyed the minimum healthcare, nutrition and education guaranteed by the Haitian Constitution and international human rights standards. Those same neighborhoods are also the subject of other calls for investigations, for a wave of systematic police killings over the last few months.

An investigation of the PN massacre may be the best chance for justice for these compounded human rights violations. The events took place in a well-defined area over a defined period of time. There are hundreds of known witnesses, their names listed in prison and guard registers. Blame for injuries can be allocated easily, as from all accounts, one side had a monopoly on firearms, the other a monopoly on toothbrushes, razor blades and

other improvised weapons. An effective investigation of the December 1 events becomes, therefore, not a test of investigative skill and resources as much as a test of a investigative will.

Institute for Justice and Democracy in Haiti
P.O. Box 745, Joseph, OR 97846
(541) 432-0597, www.ijdh.org , info@ijdh.org

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For media inquiries: publications@globalresearch.ca