

# HAITI

## STILL CRYING OUT FOR JUSTICE

INTRODUCTION.....	2
Political background.....	2
The international presence .....	3
NATIONAL COMMISSION OF TRUTH AND JUSTICE .....	7
THE JUSTICE SYSTEM.....	10
IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS.....	15
Action taken to bring human rights perpetrators to justice .....	15
The right to a fair trial - Haiti's international obligations .....	17
Trials of human rights violators currently under preparation.....	18
a) The massacre of Raboteau, Gonaïves, on 24 April 1994 (18); b)	
The massacre near Jean-Rabel on 27 July 1987 (19)	
Impunity - the obligations of foreign governments .....	20
HUMAN RIGHTS VIOLATIONS SINCE 1994.....	24
The human rights record of the Haitian National Police.....	24
Recent allegations of torture and extrajudicial execution .....	26
Allegations of ill-treatment and excessive use of force by specialized police	
units .....	27
Parallel security corps .....	29
Disciplinary measures and training .....	31
Arbitrary detentions.....	33
Police investigations of suspicious killings.....	35
Ill-treatment in Haitian prisons .....	36
CONCLUSIONS AND RECOMMENDATIONS.....	39
I. Recommendations to the Haitian authorities .....	39
Regarding Justice and Impunity (39); Regarding Policing (41);	
Regarding Prisons (42)	
II. Recommendations to the US and Haitian authorities.....	43
III. Recommendations to the US and other governments .....	43
IV. Recommendations to international organizations and governments	
involved in providing economic and technical assistance to Haiti ....	44

# HAITI

## STILL CRYING OUT FOR JUSTICE<sup>1</sup>

### INTRODUCTION

Nearly four years after the restoration of a democratically-elected government and despite the progress that has been made in some areas, Haiti is still struggling precariously to consolidate the gains that have been made and to end impunity for human rights violations. The government of President René García Préval is facing serious economic, social and political problems. Although the scale of serious human rights violations continues to be much lower than that which pertained under the *de facto* military government of General Raoul Cédras (29 September 1991 - 15 October 1994), the building of the kind of strong institutions which are necessary for a society in which the protection and promotion of human rights can be guaranteed has been slow. Faced with serious violence from several quarters, some of which may be politically-motivated, the new police force has been responsible for serious human rights violations. While the authorities have taken measures, albeit insufficient, to root out such practices, few, if any, of those suspected of perpetrating such abuses have been prosecuted. At the same time, perpetrators of human rights violations committed while the military were in power remain largely free and unpunished. Upon returning to power in October 1994, former President Jean-Bertrand Aristide talked of “justice and reconciliation”. Both he and President Préval have from time to time declared their commitment to ending impunity but real progress to establish a judicial system which can effectively address the issue has been piecemeal and plagued with delays. The Haitian Government has so far failed to establish a strong legal framework, based on international human rights standards, that is capable of guaranteeing the right to unimpeded access to justice for the victims of human rights abuses, both past and present. Amnesty International believes that, if not tackled with urgency, their failure to do so may have dire consequences for the respect and protection of human rights in Haiti for many years to come and will continue to undermine progress made in other fields.

### Political background

President Préval assumed office on 7 February 1996 replacing Jean-Bertrand Aristide, who had been constitutionally prevented from standing for a second term. A former prime minister under ex-president Aristide and a supporter of the *Lavalas* movement

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<sup>1</sup> This report was completed in April 1998 and takes account of events that occurred up to and including March 1998.

which brought the latter to power, he committed himself to continuing the institutional reforms initiated by his predecessor. However, serious splits have appeared within the *Lavalas* movement, between the OPL, formerly the *Organisation politique Lavalas*, Lavalas Political Organization, but now known as the *Organisation du peuple en lutte*, Organization of People in Struggle, and the *Famille Lavalas*, Lavalas Family, headed by Jean-Bertrand Aristide, who is expected to stand again for the presidency in the year 2000. The divisions, primarily arising from arguments over economic policy as well as the outcome of the April 1997 senatorial elections, have seriously weakened President Préval's administration and led to delays in the implementation of many proposed measures, including the judicial reform bill first presented to parliament in August 1996. The dispute led to the resignation of Prime Minister Rosny Smarth in June 1997. He stayed on as caretaker prime minister until September 1997. However, since his resignation, President Préval has been unable to find a replacement who is acceptable to parliament. Many ministerial posts, though not all, are also vacant. The parties are also divided over when the next legislative elections should take place. A February 1995 Electoral Law established that they should take place in November 1998 in order to restore the regular electoral cycle which was disrupted by the 1991 coup d'état. However, many parliamentarians argue that the Constitution, which entitles them to a four-year mandate ending in mid-1999, should take precedence.

Incidents of apparent criminal violence, in some cases directed at government opponents and in others appearing to deliberately target government officials and police officers, the provenance of which have been hard to determine, have continued to plague the country. The activities of armed criminal gangs, many of them involved in drugs trafficking and other kinds of contraband, have become a serious problem for the inexperienced police force, some of whom themselves have allegedly been tempted to become involved in such activities. Former members of the disbanded army and paramilitary groups who worked with them are also believed to possess large amounts of arms and are feared by some to be behind some such gangs and to be seeking by such means to destabilize the government. The divisions within the *Lavalas* movement have also occasionally manifested themselves in violent ways. In addition, the failure of the authorities to ensure a secure environment for the general population, particularly in rural areas, as well as frustration at the ineffectiveness of the justice system, has continued to lead to instances of "popular justice", including the lynching of at least three police officers in the early months of 1998.

### **The international presence**

The United Nations (UN) and the Organization of American States (OAS) have maintained an almost continuous civilian presence in Haiti since 1993 through the joint *Mission civile internationale en Haïti (MICIVIH)*, International Civilian Mission in Haiti. In December 1997 its mandate was renewed by the UN General Assembly until 31

December 1998. The Assembly reaffirmed the international community's commitment to continue technical, economic and financial cooperation with Haiti in support of its economic and social development and its commitment to strengthen institutions responsible for dispensing justice and guaranteeing democracy, respect for human rights, political stability and economic development. Its mandate is to: (a) verify full observance by Haiti of human rights and fundamental freedoms; (b) provide technical assistance at the request of the Government of Haiti in the field of institution-building, such as training of the police and establishment of an impartial judiciary; and (c) support the development of a programme for the promotion and protection of human rights in order to promote a climate of freedom and tolerance propitious to the consolidation of long-term constitutional democracy in Haiti and to contribute to the strengthening of democratic institutions.<sup>2</sup> It currently has bases in Port-au-Prince, Cap-Haïtien, Les Cayes, Gonaïves, Jérémie, Hinche, Jacmel, Port-de-Paix and Fort Liberté.

The UN military contingent, which also included a police component and was originally envisaged to remain in Haiti for a relatively short time after it had restored the democratically-elected government in October 1994, was finally withdrawn in November 1997. However, on the grounds that there was a continuing need to support the newly-established police force, the UN Security Council voted in November 1997 to replace what was then known as the UN Transition Mission in Haiti (UNTMIH) with a unit of 300 civilian police to be known as the UN Civilian Police Mission in Haiti, usually known by its French acronym MIPONU<sup>3</sup>, who were mandated to remain in the country until 30 November 1998. Their task is "to continue to assist the Government of Haiti by supporting and contributing to the professionalization of the Haitian National Police"<sup>4</sup>.

Under a separate bilateral agreement between the US and Haitian Governments, a US Support Group, made up of some 500 US troops, is mandated to remain in Haiti until December 1998 to provide humanitarian and civic assistance.

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<sup>2</sup> UN General Assembly, A/52/L.65, 15 December 1997.

<sup>3</sup> *Mission de police des Nations Unies en Haïti*

<sup>4</sup> UN Security Council Resolution 1141 (1997), S/RES/1141 (1997), 28 November 1997

Many other international agencies, such as the UN Development Program (UNDP), the International Committee of the Red Cross (ICRC), financial institutions such as the International Monetary Fund (IMF), the World Bank and the Inter-American Development Bank, foreign government aid agencies (such as the US Agency for International Development (USAID) and their Canadian and French counterparts), as well as numerous non-government organizations have also been operating programs and projects in Haiti in many different fields since 1994 or before. However, some Haitian non-governmental organizations (ngo's) have questioned the nature of some of the international assistance that has been provided, for example, in the realm of judicial reform<sup>5</sup>, and complained at the lack of consultation with the Haitian people, as well as of the apparent lack of coordination in some instances between the different aid donors. While primary responsibility for planning and coordinating judicial reform efforts lies with the Haitian Government, it is essential that the international organizations and aid donors work as closely as possible with the Haitian Government, as well as with each other, to ensure that the various projects that are under way to support judicial reform are both appropriate for Haiti and consistent with international standards and that they are implemented as a matter of urgency. International financial institutions should also evaluate the possible impact of their programs on the ability of the Haitian Government to guarantee respect and protection of all human rights. In his report to the UN General Assembly in October 1997, the independent expert on Haiti, Adama Dieng, said the following:

“97. Today’s political actors must also bear their share of responsibility because of the confrontation in which they are engaged, which could plunge the country into an unprecedented political crisis. Laudable efforts have been made to improve the operation of the police force and conditions in the prisons, but much remains to be done. However, the progress made could be wiped out unless there is an in-depth reform of the outdated Haitian judicial system....

“99. There is no point in masking the truth; the disarmament of Haiti cannot be described as a success. There is therefore a real danger that after the last United Nations soldier has left the demons of the past, with their cortege of disasters, will reappear. This can be averted, provided that everyone does his part, beginning with the Haitians themselves. If the support of the international community were more coordinated, it would be more effective and time and money could be saved. The representatives of the international community have a tendency to criticize the Haitian Administration as a matter of course, and

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<sup>5</sup> See, for example, “*National Coalition for Haitian Rights Urges Change in International Community Strategy for Haiti*”, a briefing paper published by the National Coalition for Human Rights in September 1997.

rightly so, but they should attempt some self-criticism. At present, the top priority must be to set up a competent and effective judicial system.”<sup>6</sup>.

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<sup>6</sup> “*Situation of Human Rights in Haiti - Note by the Secretary General*”, A/52/499, 17 October 1997.

Some Haitian ngo's are concerned that, once MICIVIH leaves Haiti, it will be difficult for Haitian institutions to take on the kind of work the mission itself performs at present, such as monitoring the police, courts and prisons and human rights training and promotion, unless greater priority is given to strengthening the institutional capacity of local human rights groups, as well as government entities working in the field of justice. The National Coalition for Haitian Rights has urged that the top priority for the remainder of MICIVIH's stay in Haiti should be to help Haitian institutions throughout the country to undertake these tasks and to build their organizational capacity<sup>7</sup>. MICIVIH is already undertaking substantial work in this domain. However, given the still precarious situation in Haiti, Amnesty International believes that such work should be strengthened as much as possible so that Haitian human rights organizations will have the capacity and clout to be able to continue effective monitoring and training and promotional activities without fear of reprisals, once MICIVIH has left. The Haitian Government clearly also needs to further develop and strengthen its own institutions devoted to the protection, promotion and implementation of human rights and fundamental freedoms, as well as to guarantee that non-governmental human rights organizations are able to carry out their legitimate monitoring and campaigning activities without hindrance.

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<sup>7</sup> See the NCHR briefing mentioned in footnote 5.

## NATIONAL COMMISSION OF TRUTH AND JUSTICE

One of the potentially most important initiatives taken since the return to democratic rule was the establishment by presidential decree in December 1994 of the *Commission nationale de vérité et de justice (CNVJ)*, National Commission for Truth and Justice. Its task was “to globally establish the truth concerning the most serious human rights violations committed between 29 September 1991 and 15 October 1994 inside and outside the country and to help towards the reconciliation of all Haitians, without prejudice to judicial remedies that might arise from such violations”. It was to try also to identify those responsible for such violations and to recommend just reparations for the victims, as well as to recommend reforms of state institutions and measures to prevent the resurgence of illegal organizations. The Commission was made up of three Haitians: Françoise Boucard (the president), Ertha Elysée and Freud Jean, and three foreigners, Oliver Jackman from Barbados, Patrick Robinson from Jamaica, and Bacre Waly Ndiaye from Sénégal. Despite numerous practical obstacles, including difficulties and delays in obtaining the required funding, the CNVJ completed its work by the end of 1995 and the final report, entitled *Si M Pa Rele* (“If I Don’t Cry Out”), was handed over to President Aristide just as he was leaving office in February 1996. He in turn passed it on to his successor. However, although the Haitian Government is reported to have accepted its recommendations in principle, it has not acted on them in a coherent or speedy fashion. Haitian ngo’s also complained that initially only a very limited number of copies of the complete report, which was written in French, had been circulated within the country. Eventually, with the help of MICIVIH, more copies were produced and distributed. However, no official créole version has been published although *Libète*, a créole daily newspaper, has translated and published extracts from it.

One of the report’s recommendations was that a follow-up committee should be set up as soon as possible to oversee the implementation of the Commission’s recommendations. It was not until September 1997 that President Préval announced that such a follow-up committee was to be set up. At the time of writing, it appears that a *Bureau de poursuites et suivi*, Proceedings and Follow Up Office, has indeed started work. Its director, Dany Léonard Fabien, announced in January 1998 that meetings had been held with victims in different parts of the country. He also announced a training program to help them present complaints to the courts. The Bureau is also reported to be responsible for studying compensation claims and establishing appropriate means of reparation. It has reportedly been given a budget of five million gourdes (17 gourdes = 1 US dollar) by the parliament to finance projects, such as the rebuilding of homes for victims.

The CNVJ report was based on interviews carried out with 8,650 people who reported 19,308 violations. Of those, there were 1,348 complaints of violation of the right to life, including 333 forced “disappearances”, 576 summary executions (including



massacres<sup>8</sup>) and 439 attempted summary executions. The most frequently alleged violation was that of torture, about which the CNVJ received 4,342 complaints. The CNVJ also considered whether any of these violations could be considered “crimes against humanity”.

Four special studies were also carried out by the CNVJ into: a) Rapes carried out against women under the *de facto* military government; b) Excavations and forensic anthropology<sup>9</sup>; c) A special inquiry into repression against the Haitian media and journalists under the *de facto* military government; and d) A special inquiry into the Raboteau massacre of 22 April 1994. A separate chapter was devoted to the kinds of repression that were carried out and the type of repressive model used, including the resulting creation of the phenomenon of refugees and internally displaced peoples. Another chapter analyzes the structures of repression, examining in particular the functioning of the Haitian armed forces and the paramilitary, in particular the *FRAPH* (at first known as the *Front révolutionnaire pour l'avancement et le progrès haïtiens*, Revolutionary Front for Haitian Advancement and Progress, later to become the *Front révolutionnaire armé pour le progrès d'Haïti*, Revolutionary Armed Front for the Progress of Haiti), and the links between the two.

The CNVJ made a series of concrete recommendations, including the creation of a “Special Reparations Commission for victims of the *de facto* régime”; special recommendations relating to rape and sexual violence against women; detailed recommendations relating to judicial reform and legislation; recommendations regarding legal proceedings and sanctions for those identified by the Commission as responsible for human rights violations; and that the Haitian Government should ratify international human rights instruments to which it is not already a party.

In a separate confidential appendix, a list was drawn up of those identified as responsible for the human rights violations documented in the report. As far as Amnesty International is aware, it was envisaged that the names would eventually be passed on to the courts so that, where there was sufficient evidence, those concerned could be prosecuted. Amnesty International was concerned to learn that the list was recently published by a Haitian newspaper. While understanding the frustration of the victims

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<sup>8</sup> Defined by the Commission as “the summary execution of at least three people in a single instance (unit of time or place)”, “*l'exécution sommaire d'au moins trois personnes dans un même évènement (unité de temps et de lieu).*”

<sup>9</sup> Résumé of a report prepared by an international forensic anthropology team brought together under the human rights program of the American Association for the Advancement of Science (AAAS).

and their relatives at the delay in following up the recommendations of the CNVJ, the organization is concerned that the publication of the list not only might lead those named to go into hiding or flee Haiti, if they have not already done so, thus evading prosecution but could also encourage reprisals to be taken against them. Some reports have also been received that some of those who testified to the Commission (many of whom, reportedly with their consent, were named in the main body of the report) have received threats from former military and paramilitary personnel, some of whom are still living in the same areas as the victims or their families and in some cases still occupy positions of power.

Amnesty International is calling on the Haitian Government to provide a full and public report of what steps have already been taken, and what plans there are for the future, to implement the recommendations of the CNVJ report. Any bodies set up to implement the recommendations should be provided with adequate human resources and funding to carry out their work. Steps should be taken to ensure the security both of those who testified to the commission and those identified as being responsible for human rights violations. Where there is conclusive evidence, the latter should be prosecuted in accordance with international fair trial norms.

## THE JUSTICE SYSTEM

One of the key recommendations of the CNVJ report, and of international governmental and non-governmental human rights bodies, was the need to reform the justice system at every level as a matter of urgency. However, while significant resources have continued to be assigned to strengthening the police, little progress has been made in establishing a justice system that can provide full judicial guarantees.

In his report to the UN General Assembly in November 1997<sup>10</sup>, the UN Secretary General said the following:

“43. Institutional development has... been uneven. Reinforcement of the judiciary has lagged behind that of the police, increasingly creating situations where the police, frustrated by endemic judicial dysfunction, are resorting to taking the law into their own hands. Judicial reform, revamping of the judiciary and improvements to the administration of justice have been painfully slow and inadequate. Low institutional capacity and a lack of leadership have had a negative impact on the best efforts of MICIVIH and donors. Much remains to be done in this crucial area to enhance the rule of law and respect for due process. The long-awaited recommendations of the Judicial Reform Preparatory Committee<sup>11</sup> are expected to be available in December 1997. The experience and expertise of MICIVIH continue to be critical inputs to the process of renovation and reform from a conceptual and functional point of view. Other institutions crucial to the promotion and protection of human rights also require further consolidation....

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<sup>10</sup> UN General Assembly document, reference A/52/687, 18 Novembre 1997

<sup>11</sup> See below for details.

“46. Though substantial, the progress achieved so far with respect to human rights remains fragile, first, because of the embryonic nature of the new ethos and culture which give priority to respect for human rights and accountability but are not yet deeply rooted in these brand-new institutions. Secondly, the increased pressures and challenges to law enforcement which might follow the end of the peacekeeping presence could lead to the temptation to sacrifice accountability on the altar of greater security effectiveness... Last but not least, important human rights protection mechanisms and institutions are either still in their infancy (the Office of the Ombudsman should commence functioning in November 1997<sup>12</sup>) or require further institutionalization and acceptance, as in the case of the Office of the Inspector General of the Haitian National Police. Other control mechanisms are not yet functional (prison inspectorate and judicial inspectors). Civilian society oversight mechanisms with regard to the police and prisons are still embryonic...”

In August 1996 the Minister of Justice, Pierre Max Antoine, presented a draft bill on judicial reform to the Haitian Parliament. Since then both the Senate and the Chamber of Deputies have presented amendments but, due to the ongoing political crisis which has virtually paralyzed the work of parliament, a final version has yet to be agreed. Nevertheless, in December 1997, after ten months of work, the *Commission préparatoire à la réforme du droit et de la justice*, Preparatory Commission for the Reform of Law and Justice, completed its report. The Commission, which received technical support from MICIVIH and the European Union, was mandated to determine the reforms needed, establish their cost and method of financing and set a timetable for putting them into effect. Its report, which was due to be officially presented in early 1998, cannot be implemented, however, until the judicial reform bill has been passed by parliament.

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<sup>12</sup> See below for details.

One issue which the Minister of Justice has recently flagged as in need of change is the statute of limitations which applies under the existing Code of Criminal Procedure, according to which no one can be indicted for a crime committed over ten years earlier. Amnesty International would support such a move on the grounds that it would enable the Haitian State to investigate, prosecute and punish those responsible for human rights violations, in accordance with its obligations under international law, however long ago they occurred. In the case of crimes against humanity - in which category many past human rights violations in Haiti, both during and prior to the rule of the *de facto* military government, can be considered to fall - international law does not permit a statute of limitations. After the Second World War, Haiti was in fact one of the seventeen States who first subscribed to the Statute creating the Nuremburg Tribunal<sup>13</sup>. In 1950, as a demonstration of the political will of the Haitian State to punish crimes against humanity, it ratified the UN Convention on the Prevention and Punishment of the Crime of Genocide. Such political will was further demonstrated when reference to the punishment of crimes against humanity was included in the mandate of the National Commission of Truth and Justice. In a 1993 report, the UN Experts on the Question of Impunity for Perpetrators of Human Rights Violations, further argued that the existence of a statute of limitations can in itself be used as a legal mechanism to justify impunity<sup>14</sup>.

Amnesty International furthermore believes that the absence of a justice system capable of guaranteeing access to justice in the past, especially if that system was part of the system of repression, cannot be invoked by a State to justify its failure to meet its international obligations<sup>15</sup>. The report of the National Commission of Truth and Justice concluded that, under the *de facto* military government, the justice system had become "a tool of the repressive apparatus of the State" and that the victims did not seek recourse through the courts because it was "illusory and even dangerous" to do so. This was also the case under earlier administrations.

In March 1998, the Haitian Senate announced that a conference would be held to consider proposals to amend the 1987 constitution. Any proposed amendments would require approval by two thirds of the Chamber of Deputies and the Senate.

Pending parliamentary approval of the judicial reform bill, the government has undertaken a number of interim measures to try to address some of the most pressing

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<sup>13</sup> Annex to the Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, signed in London on 8 August 1945.

<sup>14</sup> Report to the Sub-Commission on the the Prevention of Discrimination and the Protection of Minorities, E/CN.4/Sub.2/1993/6.

<sup>15</sup> This point is made in Article 16 of the Draft Convention on the Protection of All Persons from Forced Disappearance, E/CN.4/Sub.2/1996/WG.1/CPR.2, 7 August 1996.

problems. For example, in November 1996, a commission, entitled *Commission consultative pour pallier à la lenteur de la justice pénale*, Consultative Committee to Overcome the Slowness of Penal Justice, was established by presidential decree. Its task was to formulate recommendations to the Ministry of Justice concerning cases of detainees who had been held for long periods without being brought to trial. It found that, as of September 1996, only 20.1% of the total prison population had been tried and sentenced. As a result of a review of 226 cases of detainees held at the National Penitentiary and Fort National only, 53 detainees were released. Recommendations were also made concerning the speeding up of some 70 other cases. In the medium term, the Commission stressed the need to carry out a series of important measures to improve the functioning of both the judicial apparatus and the prison system. However, since the review was carried out, the number of detainees awaiting trial has reportedly again grown significantly.

Although some progress, albeit limited, has been made with regard to judicial matters and MICIVIH and others have continued to work with Haitian officials to try to ensure that the existing judicial system at least functions as well as it can, many problems remain. Among problems mentioned in the UN Secretary General's report of November 1997<sup>16</sup> were poorly conducted trials, a lack of police and judicial investigations, no material or other evidence brought to court, an absence of witness testimony and difficulties in constituting juries. The report also noted that corruption and the incompetence of some judicial officials resulted in gross miscarriages of justice. Amnesty International urges that all such allegations should be investigated promptly and impartially.

The establishment of a fair and efficient justice system in Haiti, accessible to all and based on the implementation of international standards such as the Basic Principles on the Independence of the Judiciary, the UN Guidelines on the Role of Prosecutors and the UN Basic Principles on the Role of Lawyers, is crucial to ending impunity for human rights violations as well as to bringing about a society in which all human rights can be fully respected and protected. In order to comply with these Principles, the necessary resources should be provided. This is a long-term process which will require not only the support of the international community but the maximum possible participation of the Haitian people so that the changes that are brought about, while adhering to international standards, should be appropriate and workable in the Haitian context. While recognizing that cost and general lack of resources are major factors affecting the government's ability to quickly implement some recommendations, including those put forward by the CNVJ, Amnesty International believes that some measures could be

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<sup>16</sup> "The Situation of Democracy and Human Rights in Haiti - Report of the Secretary-General", A/52/687, 18 November 1997

implemented immediately with little financial cost and would demonstrate the political will of the Haitian authorities to provide a basic framework for the protection and respect of human rights.

For example, it would urge the Haitian Government to ratify international and regional human rights instruments which it has not already ratified. These include the two optional protocols to the International Covenant on Civil and Political Rights (ICCPR)<sup>17</sup>, the International Covenant on Social, Economic and Cultural Rights, the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (subsequently referred to as “the UN Convention against Torture”), the Inter-American Convention to Prevent and Punish Torture (which it signed in 1986) and the the Inter-American Convention on the Forced Disappearance of Persons. It would also recommend that Haiti recognize the jurisdiction of the Inter-American Court of Human Rights. As well as the ICCPR, Haiti is already a party to the UN Convention of the Elimination of all Forms of Discrimination against Women, the UN Convention on the Rights of the Child and the American Convention on Human Rights. Haiti’s obligations under such international standards should eventually be incorporated into all relevant legislation, including the constitution.

In April 1997, the National Assembly reportedly ratified the Inter-American Convention Against Violence Against Women. In December 1997, in response to recommendations put to it by the International Tribunal Against Violence Against Women in Haiti, an ngo-sponsored event held in the capital the previous month, the President of the National Assembly, Edgard Leblanc, announced that the parliament had committed itself to following up on all the tribunal’s recommendations during its session starting in January 1998. He also said that the parliament had agreed to ratify “early in the new year” the UN Convention against Torture, and that they were planning to amend the penal and civil codes by the end of 1999. Amnesty International welcomes this announcement and urges the Haitian Government to give the highest priority to such measures.

As mentioned in the UN Secretary-General’s report cited above, the *Bureau du Protecteur des Citoyens*, Office of the Ombudsman, under the leadership of Dr Louis E. Roy, was indeed inaugurated on 4 November 1997 and has started work. The post was established in the 1988 constitution “to protect individuals against any kind of abuse in public administration” but has never before been implemented. Amnesty International very much welcomes this initiative and recommends that steps be taken to ensure that the scope of the mandate of the Ombudsman can address all types of human rights violations committed by officials or employees of all branches of government. Adequate funding

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<sup>17</sup> Haiti ratified the ICCPR in 1991.

should be provided to the Ombudsman and his staff to enable them to carry out their work.



## IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS

### Action taken to bring human rights perpetrators to justice

Since 1994, little real progress has been made in bringing to justice those responsible for human rights violations, past or present. Upon President Aristide's return, victims of human rights violations and relatives of victims were encouraged to lodge complaints at offices called *bureaux de doléances*, complaints offices, which had been specially set up in most large cities on a temporary basis. In some areas, scores of complaints were presented. However, insufficient resources were provided to follow up the complaints and very few reached the courts. In early 1996 MICIVIH transmitted to the Minister of Justice a list of 62 cases involving some 90 alleged FRAPH members which were before the courts, only eight of whom had been convicted up to that point. A preliminary, partial survey carried out by MICIVIH around the same time suggested that more than 250 former soldiers and former *attachés* had also been named in complaints before the courts.

President Aristide also set up the *Bureau des Avocats Internationaux*, Office of International Lawyers, to help the Haitian authorities prepare the trials of certain human rights perpetrators. In 1995, the HNP established *l'Unité d'investigation spéciale*, Special Investigative Unit, to investigate a wide range of serious crimes, including human rights violations committed under the military régime or before. Only three prominent human rights cases have so far been brought to trial<sup>18</sup>:

- ◆ In 1995 in Les Cayes Lieutenant Jean-Emery Piram was sentenced *in absentia* to 60 years' hard labour for the torture and murder of Jean-Claude ("Clody") Museau in January 1992.
- ◆ In 1995, *attaché* Gérard "Zimbabwe" Gustave was sentenced to life imprisonment and several others, including former police chief Michel François, were convicted *in absentia* for the assassination of Antoine Izméry, a businessman and prominent supporter of former President Aristide, in September 1993;.
- ◆ In July 1996 two men were acquitted of the assassination of Justice Minister Guy Malary in October 1993 (see below).

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<sup>18</sup> See Amnesty International report *Haiti: A Question of Justice*, AMR 36/01/96, January 1996, for further details of the first two cases referred to.

Other investigations, including those of the 1994 massacre in Raboteau, which is expected to come to trial later this year, and the 1987 massacre at Jean-Rabel are reportedly continuing. Further details of these cases are given below. A few other cases have also reached the courts following judicial action resulting from the lodging of complaints by the victims and/or their relatives. Investigations into other cases appear to have made little or no progress. For example, in the case of Father Jean-Marie Vincent, who was extrajudicially executed in the capital on 28 August 1994<sup>19</sup>, the authorities have reportedly said that there is insufficient evidence to bring the case to court.

Following its observation of certain trials of individuals accused of human rights violations carried out under the military government, MICIVIH noted that they had been carried out “in an expeditious fashion without evidence or eyewitness testimony having been presented or taken into consideration in the decision. Great importance thus seemed to be given to satisfying rapidly a large majority of the population, who were keen to see justice done against these former violators”<sup>20</sup>. On the other hand, the report also found that some judges who were close to the former military government had unjustifiably released several former *chefs de section* who had been arrested at the time of President Aristide’s return.

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<sup>19</sup> *Ibid.*

<sup>20</sup> “*Le Système Judiciaire en Haïti - Analyse des aspects pénaux et de procédure pénale*”, MICIVIH, Mai 1996 [“The Justice System in Haiti - Analysis of Penal Aspects and Penal Procedure”, MICIVIH, May 1996.]

The acquittal in the Malary case brought consternation to many in Haiti. Commenting on the case afterwards, President Préval reportedly said that “Haitian justice has given itself a slap in the face”. However, according to various sources, there were again serious deficiencies in the proceedings deriving at least in part from the failure of the authorities to reform the justice system. Failure to secure a conviction in the case and to indict others suspected of involvement in the assassination of Guy Malary was also attributed by some to fear of reprisals against witnesses and judges and prosecutors investigating the case, as well as the failure of the US authorities to hand over documentary evidence regarding the case it is believed they possess (see below). A former *attaché*, who had been detained in connection with another offence, was also mysteriously released in September 1995 just as he was reportedly about to be interviewed about his alleged involvement in the assassination of Guy Malary and others, and is believed to have fled the country. Some sources suggest that he was a paid informant of the US Drug Enforcement Agency in the early 1990s and that the Haitian authorities were put under pressure to release him. The US authorities later denied that the man had any association with the US at the time of Malary’s assassination. A CIA intelligence memorandum dated 28 October 1993, which was made public in the context of a lawsuit in 1996<sup>21</sup>, furthermore alleged that the murder of Guy Malary was coordinated by army officials, including General Philippe Biamby, and FRAPH members, including Emmanuel Constant. US officials subsequently alleged that there was doubt about the reliability of the informant.

Further acquittals took place during 1997:

- ◆ In July, a former soldier accused of fatally shooting Loukers Pierre in June 1991 and of giving orders for the killing of two other men, Antoine Pauleus and Julien Berilus, in June 1992 was acquitted for lack of evidence. There were also said to be procedural irregularities and problems with the composition of the jury.
- ◆ In August, two former *attachés* accused of the murder of Macius Massillon in September 1994 were acquitted for lack of evidence at a trial in Hinche.
- ◆ In September, a former soldier accused of murder and another accused of complicity in the murder were acquitted at a hearing in Jacmel after the prosecution failed to produce any evidence or witnesses. Many jury members had also reportedly failed to report to court. Police reinforcements reportedly had to be brought in to contain the public’s anger at the verdict. The soldier had been accused of murdering Marie Delaine Nicolas in 1993 after she had refused

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<sup>21</sup> The New-York based Center for Constitutional Rights filed a \$32 million lawsuit against FRAPH in 1994 on behalf of Alerte Béance, a Haitian woman who was mutilated and left for dead in late 1993 by men believed to be members of FRAPH. In the course of their investigations, they were able to subpoena declassified CIA documents relating to the situation in Haiti at that time.

his advances. He had been detained by the military at the time and held in detention ever since after being sentenced to 15 years' imprisonment by a court martial. However, the army high command had never confirmed his sentence.

In one case where a conviction was secured - that of the murder of peasant leader Eluckner Elie in January 1994 - Garnier Hilaire, a former soldier, and Bethany Pierre, a former assistant to a *chef de section*<sup>22</sup>, were found guilty at a trial held in Hinche in July 1996 but were sentenced to only three years' imprisonment instead of the life sentence prescribed for such crimes.

### **The right to a fair trial - Haiti's international obligations**

The failure to obtain a conviction in the Malary case and others appears to have encouraged the authorities to take serious steps to ensure that future such cases which are brought to trial, in particular the Raboteau case, are prepared more thoroughly and that every effort is made to avoid the pitfalls encountered in earlier cases. Amnesty International welcomes such efforts and would urge that such trials adhere to international norms for a fair trial. It would also urge the Haitian authorities to take all possible steps to ensure the safety of all those involved in such trials, including victims, witnesses, court officials, lawyers and defendants. Ensuring justice and the rule of law must be an integral part of the struggle to end impunity and to this end the right of the victims to justice must be guaranteed while at the same time ensuring that those responsible for human rights violations are tried fairly in accordance with international fair trial norms. The problem of impunity will not be solved by violating the rights of those suspected of carrying out human rights abuses.

Haiti's obligations under the ICCPR recognize, among other things, that every person has the right to:

- a fair and public hearing by a competent, independent and impartial tribunal;
- be presumed innocent until proven guilty;
- be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge;
- have adequate time and facilities for the preparation of his or her defence;
- be tried in his or her presence, to defend himself or herself in person or through a lawyer of his or her choice;
- be provided with state-funded legal assistance where the defendant is unable to afford a lawyer;

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<sup>22</sup> Former rural police chiefs who were disbanded following the return of President Aristide in 1994.

- examine, or have examined, witnesses against him or her and to call witnesses to testify on his or her behalf;
- have the free assistance of an interpreter if he or she cannot understand the language used in court;
- not be compelled to testify against himself or herself or to confess to guilt;
- appeal to a higher tribunal;
- compensation if a final conviction is reversed or there is pardon by reason of a miscarriage of justice;
- not be tried or punished against for an offence for which he or she has already been finally convicted or acquitted.

### **Trials of human rights violators currently under preparation**

Two major cases are currently under preparation for trial, the first of which is expected to take place later this year:

#### **a) The massacre of Raboteau, Gonaïves, on 24 April 1994**

Raboteau is a heavily-populated shanty town which has grown up along the coast at Gonaïves, a city in the Artibonite department. Throughout the period of the *de facto* military government, it was particularly targeted for repression by the army and paramilitary because of the strong support of its inhabitants for ousted president Jean-Bertrand Aristide. As a result of a joint military and paramilitary operation which had begun on 18 April 1994, an unknown number of people, believed to number between 20 and 50, lost their lives on 24 April 1994 after they were surrounded and attacked. Homes were sacked and burned and men, women and children beaten. Many died from the beatings or from gunshots while others drowned as they fled into the sea. The bodies of many were never recovered since the survivors had to flee the area for their own safety. The CNVJ report contains a study of the massacre based on 210 complaints presented to it. It also commissioned a forensic anthropology investigation by a team of Inter-American Forensic Anthropology Consultants, which was carried out in September and October 1995 with the assistance of MICIVIH and the University Hospital of Haiti in Port-au-Prince. Among several cases examined were the remains of three alleged victims of the Raboteau massacre.

The trial is expected to take place later in 1998 although no firm date has yet been set. At the time of writing, at least 22 people, including former army captain Castera Cénafils, who was in command of the district at the time, are in detention under investigation for crimes connected with the massacre, including murder, attempted murder, assault, torture, illegal imprisonment, abuse of authority, theft, arson and destruction of property. Arrest warrants have also been issued for the three leaders of the 1991 military coup - Lt. Gen. Raoul Cédras, Lt. Col. Michel François and Gen.

Philippe Biamby, all of whom fled Haiti in October 1994, and seven other military officers. They are wanted for their alleged role in masterminding the massacre.

One of those who had been arrested in connection with the Raboteau case, Wilbert Morisseau, was able to escape following a confused incident at a court hearing in March 1997. Three prison officials were later blamed and dismissed. A new arrest warrant was issued for the man but, as far as is known, he has not been re-arrested.

#### **b) The massacre near Jean-Rabel on 27 July 1987**

On 23 July 1987 some 200 peasants belonging to the *Tet Ansamn*, Heads Together, peasant movement were reportedly killed after being ambushed by armed groups in the pay of local landowners in a remote area near Jean-Rabel in northern Haiti. One of the landowners was later said to have boasted that “1,042 communists” had been killed. The government at the time, the *Conseil national de gouvernement (CNG)*, headed by General Henri Namphy, carried out an investigation, the findings of which failed to apportion blame. In 1991, during former President Aristide’s first few months in power, several landowners implicated in the massacre were arrested but were released when the military took power. In 1995 the HNP reportedly re-opened investigations into the case and eight arrest warrants were issued. A prominent landowner was arrested but released later that year.

In July 1997, the tenth anniversary of the Jean Rabel massacre, the *Plate-Forme des organisations haïtiennes des droits humains (POHDH)*, Platform of Haitian Human Rights Organizations, criticized the inaction of the government and announced that it intended to carry out a national and international campaign on behalf of the Jean Rabel victims.

In January 1998, three people wanted in connection with the Jean-Rabel massacre were arrested. Five others are reportedly still being sought.

#### **Impunity - the obligations of foreign governments**

Amnesty International believes that foreign governments have an obligation to assist the Haitian Government in complying with international human rights standards and principles regarding its own obligations to the victims of past human rights violations.

During and since the period of rule of the *de facto* military government, there have been persistent allegations that the US Central Intelligence Agency (CIA) may have been conducting operations in Haiti which were in contravention of official US policy in

Haiti and which may have involved direct or indirect complicity in human rights violations.

In October 1994, US troops belonging to the Multinational Force (MNF) which restored President Aristide to power, seized some 160,000 pages of documents and photographs from army, police and paramilitary offices in Haiti and took them to the USA. 60,000 of the documents were reportedly taken from the headquarters of the FRAPH. It is widely believed that information contained in the documents could shed light on the involvement of the Haitian army and paramilitary, as well as possibly US agencies and citizens, in human rights violations during the period of military government. The Haitian Government requested the US authorities to return the materials in their entirety. However, the US authorities reviewed the documents and reportedly blanked out sections of them, said to total over 100 pages, where reference is believed to have been made to US citizens and possibly other matters relating to possible US government activities in Haiti. In October 1996 the materials were transferred to the US Embassy in Port-au-Prince but the Haitian Government has continued to refuse to accept them back unless they are intact.

According to the 1997 annual report of the UN Working Group on Enforced or Involuntary Disappearances<sup>23</sup> and in response to requests for information regarding what action had been taken to investigate “disappearances” that had occurred between 1991 and 1994, the Haitian Government informed the Working Group that, following the return to constitutional order on 15 October 1994, it had found no files relating to the persons who had allegedly “disappeared”. It stated that it had been unable to report on the fate or whereabouts of the persons reported as “disappeared” as all documents belonging to the Haitian Armed Forces and FRAPH had been sent abroad by the multinational forces. It expressed the hope that the return of the documents would permit it to elucidate the reported cases of “disappearance”. The UN Working Group agreed to raise the issue of the files with the Special Representative of the Secretary-General for Haiti, in the hope that access to such information could be obtained. In his report to the 1997 session of the UN Commission on Human Rights<sup>24</sup>, the Special Expert on Haiti said: “It is urgent for the United States to settle the question of the confiscated documents once and for all so as to avoid giving the impression that it wants to ensure the impunity of the authors of grave violations of human rights”. He called on the US authorities to return the documents “in full and without delay”. Furthermore, in the Draft Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity presented by the Special Expert on Impunity

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<sup>23</sup> E/CN.4/1997/34.

<sup>24</sup> E/CN.4/1997/89.

to the 1998 session of the UN Commission on Human Rights<sup>25</sup>, consideration was given to the preservation of archives bearing witness to violations. Principle 17(c) calls for international cooperation in the communication or restitution of archives by third countries “for the purposes of establishing the truth”.

Amnesty International believes that the documents in question in this instance are likely to contain information that could be crucial to the investigation of human rights violations carried out under the *de facto* military government and urges the US authorities to hand them over intact to the Haitian Government. Given that the documents were removed in the context of a UN-sanctioned operation, Amnesty International would also urge the UN Secretary-General to encourage the US authorities to return the documents intact. Amnesty International also calls on the Haitian Government to take appropriate measures to ensure the security of all those who might be identified in the documents as being responsible for human rights violations or other activities of an incriminating nature, as well as the security of the documents themselves, and to ensure that any legal proceedings initiated on the basis of information contained therein will be carried out in accordance with international standards for a fair trial.

Amnesty International furthermore calls on the US Congress to consider conducting an independent investigation into the possible direct or indirect involvement of US officials in human rights violations in Haiti at the time of the *de facto* military government and that, should any US citizens be found responsible for such violations, they be held to account for their actions.

Since the return of President Aristide in October 1994, many prominent members of the army and the paramilitary have fled Haiti, including several against whom arrest warrants had been issued in connection with human rights violations and other crimes. In August 1995, in response to an extradition request by the Haitian Government, a US court ordered former FRAPH leader and self-professed CIA agent Emmanuel Constant to be returned to Haiti. At the time of his detention by US immigration officials, the then US Secretary of State Warren Christopher noted that “the continued presence and activities of Emmanuel Mario Constant... in the United States would have potentially serious adverse foreign policy consequences for the United States and would compromise a compelling United States foreign policy interest”. However, in June 1996 Emmanuel Constant was released from detention in the USA, reportedly as the result of a secret deal with the authorities in which he agreed to drop a civil suit for “wrongful incarceration” which he had brought against US officials. The US authorities have subsequently argued

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<sup>25</sup> The Administration of Justice and the Human Rights of Detainees - Question of the Impunity of perpetrators of human rights violations (civil and political), E/CN.4/Sub.2/1997/20/Rev.1.



that returning him to Haiti may cause further instability and expressed doubt that he would receive a fair trial. The Haitian authorities have reportedly given assurances that he would receive a fair trial if returned to Haiti.

In early 1998 the Haitian Government also sought the extradition of three of the 1991 coup leaders and seven other former military officers in connection with their alleged involvement in the Raboteau massacre (see above). Former Lieutenant-General Raoul Cédras is living in Panama and former Lieutenant-Colonel Michel François is in Honduras. Reports indicate that former General Philippe Biamby and the seven others may be in the United States.

While the obligation to bring human rights violators to justice rests primarily with the Haitian Government, other governments also share that obligation. This principle should apply wherever such people happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the commission of the crime. If suspected human rights violators are returned to Haiti, the US and other governments should assist the Haitian authorities in any way they can to ensure that they receive a fair trial, including by providing any evidence that might be in their possession or by providing appropriate legal expertise to assist in the preparation and holding of the trial.

## **HUMAN RIGHTS VIOLATIONS SINCE 1994**

Amnesty International is concerned that the failure to seriously address the question of impunity for past human rights violations, compounded by the failure to make speedy progress on the question of judicial reform as well as by the current political crisis facing the country, has created an atmosphere in which human rights violations will continue to flourish. Torture and ill-treatment, carried out mainly by the police but also occasionally in prisons, continues to be a serious concern. The HNP has also been responsible for some extrajudicial executions and several deaths and injuries resulting from the use of excessive force. There have also been several other killings in suspicious circumstances which require thorough and impartial investigations in order to establish whether those responsible may have been acting on the orders of government officials or influential people close to the government. As already mentioned, the failure of the authorities to take effective action to bring those responsible for human rights violations to justice or to stem the activities of criminal gangs known as “*zenglendos*” has led to an ever growing tendency by the general population to resort to taking the law into their own hands.

### **The human rights record of the Haitian National Police**

The newly-established HNP, which became operational in July 1995, controversially included some former soldiers<sup>26</sup> whom it was widely believed had not been adequately screened to eliminate those responsible for human rights violations under previous administrations. The new recruits received only four months of training and were deployed in difficult conditions with a serious lack of resources and, above all, experience. While it is clear that serious efforts have been and are continuing to be made to resolve the problems, Amnesty International is concerned that HNP officers have continued to commit serious human rights violations and that although many have been dismissed or referred to the courts, few, if any, have actually been brought to trial.

In the first five months of 1997, MICIVIH received allegations from over 100 individuals that they had been hit or beaten by police officers. It also raised with the Haitian authorities more than 20 fatal shootings by police during the same period, about half of which constituted human rights violations, mostly cases of excessive force. However, it concluded that beatings and other abuses linked to the police were “not systematic or routine”.

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<sup>26</sup> The *Forces armées d’Haïti (FADH)*, Haitian Armed Forces, were effectively dismantled by President Aristide in 1995 but have not yet been constitutionally abolished.

An earlier more detailed MICIVIH report, entitled “The Haitian National Police and Human Rights” and published in July 1996, made the following observations:

“Many incidents of ill-treatment do not appear to have been premeditated and frequently they occurred in contexts of tension and confrontation between police agents and suspects during, or immediately following, the arrest. Some individuals were roughly treated, knocked or thrown to the ground, or hit while being arrested. Others were reportedly beaten while held in police custody. A significant number of individuals alleged being ill-treated during interrogation, particularly during 1996. Victims of ill-treatment said they were subjected to blows, kicked, hit with batons and the butts of pistols and - in some cases - with plastic tubing. Firearms have at times been used to threaten or intimidate detainees. The beatings and ill-treatment have occasionally resulted in serious injury... Furthermore, the mission had recently received several allegations of individuals receiving electric shocks while being questioned in a Port-au-Prince police station. In general this treatment was inflicted during the first day or days of detention, while the suspects were being questioned. In several cases police blindfolded the detainees, mainly during questioning. The majority of these victims were individuals suspected of being armed gang members, of having killed police agents, or participating in armed robberies.”<sup>27</sup>

In a meeting with Amnesty International representatives in February 1997, the Inspector General of Police, Luc Eucher Joseph, who is responsible for investigating complaints made against the HNP, admitted that mistakes had been made. However, he said that additional training and the establishment of a chain of command structure had produced improvements. His office had carried out investigations into many cases and those found responsible for abuses had been dismissed and in some cases referred to the courts. However, he complained about the slowness of the justice system, saying that in some cases, even when there was compelling evidence requiring action by the judiciary, the latter did not act quickly or seriously. This caused the police to lose faith in the judiciary and, in some cases, to resort to taking justice into their own hands.

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<sup>27</sup> Paragraphs 76-77, “*La Police Nationale d’Haïti et les Droits de l’Homme*”, MICIVIH, July 1996.

When questioned about allegations received by MICIVIH in 1996 that electric shock torture had been used by police against detainees in some cases, the Inspector General said that it had not been possible to establish whether or not it had occurred but he gave assurances that such practices were no longer occurring. MICIVIH reported in its press release 7 February 1997<sup>28</sup> that it had not received any further reports of electric shock torture after presenting its concerns to the police authorities. Amnesty International has not received any such reports since then either.

### **Recent allegations of torture and extrajudicial execution**

Among the most serious cases of torture and extrajudicial execution torture reported to Amnesty International over the past two or three years are the following:

- On 5-6 March 1996 seven people were killed in a police operation against armed gangs in Cité Soleil, a shanty town in the capital. A MICIVIH investigation found that six had been shot in the head. Although a police investigation was carried out, the findings were never made public and it is not known whether any action was taken against those responsible.
- On 6-7 June 1996 police from Carrefour police station in the capital detained four suspects, drove them to a remote area where they shot them and left them for dead - two survived. Three police officers were arrested in connection with the case.
- In June 1996 police at Croix-des-Bouquets police station near Port-au-Prince fatally shot two detainees, leaving one body in a latrine, and beat two others to death. One policeman was later arrested and charged with murder. Seventeen others were disciplined.
- In November 1996 five men were killed by police in Delmas, Port-au-Prince. The police alleged they were killed in a shoot-out but it later transpired that at least one of the victims was handcuffed before he was shot. In January 1997 four police officers were suspended in connection with the incident.
- In February 1997 police fatally wounded pawnbroker Nicholas Métellus at his home in St Marc when they were seeking to arrest protesters who had blocked a road. His killing sparked off further protests and a mob overran a police post in nearby Freycineau, disarmed the police and set fire to the building. Police reinforcements had to be called in from other areas to restore order. A total of 56 people were arrested in connection with the events, several of whom reported that they were beaten with batons and handguns while under interrogation. It is

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<sup>28</sup> "The Human Rights Situation during the First Year of Office of President René Préal", 7 February 1997

not clear whether any action was taken against those responsible for either the killing of Nicholas Métellus or the subsequent allegations of illtreatment.

- In September 1997, an HNP agent reportedly tortured a civilian whom he suspected of stealing his police radio. He reportedly took the man to a voodoo temple in Delmas, Port-au-Prince, where he handcuffed him and bound his feet before beating him with a baton, kicking him repeatedly and burning him with a hot iron on his buttocks, neck and stomach. The policeman later took the man to a clinic for medical treatment where he told the staff that the man had been attacked by a *zenglendo*. The policeman and a civilian were later arrested.
- On 21 September 1997, a man accused of participating in a “popular justice” killing was reportedly arrested in Bassin Bleu, in north-western Haiti, and taken next day to Gros Morne police station in the Artibonite department. The man later alleged he was lain on a table inside the police station and beaten by three police officers with a cable and batons while they interrogated him. Despite suffering a broken arm and suffering from deep welts on the back, he was then left on the ground all day in full view of passers-by. An enquiry into the case was opened by the Inspector General’s office.
- In October 1997 gang leader Dieusibon Lima, alias “Covington”, and his associate, Moïse Beauplan, alias “Ti Moïse”, were beaten to death in Delmas police station in the capital. Initial reports had indicated they were shot dead in a shoot-out with police. The Inspector-General’s office opened an investigation into the incident.
- In October 1997 one person was killed and four others wounded (including the police chief from nearby Petit-Goâve) when police opened fire on a crowd leaving a football match in Grand-Goâve after a rock had been thrown at the vehicle they were travelling in. One of the police officers involved, who was subsequently arrested, had previously been transferred from Jacmel, together with his brother, after both had been accused of ill-treating detainees there. His brother later shot a man in a personal dispute in Port-au-Prince and was suspended from duty.

### **Allegations of ill-treatment and excessive use of force by specialized police units**

On several occasions over the past year or so Amnesty International has received reports that the actions of the *Compagnie d'intervention et de maintien d'ordre (CIMO)*, Rapid Intervention Force, their regional equivalents known as *Unités départementales de maintien d'ordre (UDMO)*, Departmental Rapid Intervention Units, and the *Groupe d'intervention de la Police nationale d'Haïti (GIPNH)*, HNP Intervention Force, usually known as the SWAT unit (*Special Weapons and Tactics*), have sometimes been heavy-handed, sometimes resulting in serious injuries. On some occasions firearms have

been used to disperse demonstrators in circumstances which did not appear to warrant such force. Amongst the incidents involving these units are the following:

- MICIVIH called for an investigation of police action during a peaceful demonstration calling for the resignation of the government outside the National Palace on 9 January 1997. At least three people, one of whom had his hand blown off, were injured after teargas was used against the crowd by CIMO agents in riot gear.
- On 2 September 1997, some 15 heavily-armed CIMO agents arrested Pierre-Yvon Chéry, director of Radio Télédiffusion Cayenne, at the radio station in Les Cayes and reportedly punched and hit him with a rifle both at the time of arrest and in detention. He was released next day without charge. Three police officers whom he had identified as responsible for the ill-treatment failed to appear at a court hearing on 6 November 1997 in a civil suit he had taken out against them for serious injury. It is not clear whether an official police investigation has taken place into the incident.
- In February 1998 members of several specialized police units were called in to restore order in Mirebalais, in central Haiti, following a violent clash between local police and an angry mob. On 5 February police had arrested two people, including a member of an organization called *Operasyon Mèt Lòd nan Dezòd (OMLD)*, Operation to Put Order into Disorder, and taken them to the police station. A crowd of at least 50 people, believed to be mainly OMLD supporters, later gathered outside the police station to protest the arrests. Shots were fired by police to disperse the protesters and a passerby on a bicycle was killed and another man injured. There are conflicting reports as to whether the police fired into the air or directly at the crowd, some of whom were reportedly armed with machetes and other weapons. The crowd, who blamed the police for the death of the passerby, reacted by storming and ransacking the police station and hacking the local police chief to death with a machete. They also set fire to vehicles, stole radios and weapons, and released 76 prisoners from the nearby prison. Approximately three hours later, some 60 CIMO and GIPNH agents arrived from the capital, accompanied by the Director General of the HNP and the Secretary of State for Public Security, together with an UDMO team from Hinche, arrived to restore order. Some 30-40 people, most believed to be connected with the OMLD, were detained, several of them in their homes in Mirebalais, Lascahobas, Saut d'Eau and elsewhere, even though some were not present during the incident in Mirebalais. Most of the arrests were said to have taken place without warrants and at night, contrary to Haitian law. Several were beaten at the time of arrest while several others were reportedly badly beaten or otherwise ill-treated while in detention at Mirebalais police station, as a result of which at least three had to be hospitalized. All but four of the detainees were reportedly later

released. Tensions had reportedly been running high in the area before the attack between members of MLD, which reportedly supports *Famille Lavalas*, and members of the *Mouvman Peyizan Papay (MPP)*, Papaye Peasant Movement, which supports the OPL. Investigations were opened by both the Port-au-Prince judicial police and the HNP Departmental Director for the Mirebalais area. Both the Senate and the Permanent Human Rights Committee of the Chamber of Deputies also sent commissions of enquiry to Mirebalais. However, it is not clear whether a specific investigation has been opened into police handling of the whole incident, including the police shootings and the allegations of ill-treatment, by the Inspector General's office. As far as Amnesty International is aware at the time of writing, no one has been prosecuted in connection with any of the events that took place on 5 February.

- On 18-19 March 1998, a CIMO unit, which had reportedly been sent to the area to restore order in the context of several land disputes which had reportedly turned violent, ransacked a radio station in Milot, northern Haiti, called *Radio des Voix Paysans de Milot*, Milot Peasant Voices Radio, which is run by the *Mouvement des Paysans de Milot*, Milot Peasants' Movement. In the course of the operation, during which they were reportedly seeking to arrest several people suspected of being involved in the sabotage of a local factory, they reportedly shot and injured the radio station guard who was the only person in the building when they arrived there just after midnight. The Minister of Justice subsequently ordered that the radio station be repaired and that an investigation be opened into the circumstances of the incident.

Amnesty International is particularly concerned at reports that, contrary to the current police law which restricts the HNP to the use of small arms, the GIPNH and CIMO units, and sometimes other HNP units, use heavy weapons such as 12-bore shotguns, Uzis and M-16s. It is further concerned that proposals to amend the police law to permit the use of such weapons do not establish stringent enough procedures regarding their possible use. Amnesty International would urge the Haitian authorities to ensure that provisions for the use of firearms by all police officers adhere to international standards for the use of such weapons, in particular the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>29</sup> and that immediate action is taken against anyone suspected of using unnecessary force or ill-treating detainees in any way.

Amnesty International is also concerned at reports that some police officers sometimes use unauthorized weapons, keep weapons with them when off duty, do not

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<sup>29</sup> Adopted by consensus by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders on 7 September 1990.

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wear uniforms or identification badges, or use vehicles without number plates or police markings.

### **Parallel security corps**

In February 1998 President Préval announced the imminent creation of special police units to be deployed in the countryside. Details were not available at the time of writing but it is understood that the new units would form part of the HNP. All security forces are formally part of the HNP. However, the continued existence of parallel security corps of different kinds operating without government regulation remains a concern. They include groups acting under the orders of local municipal authorities, private security companies, and *brigades de vigilance*, neighbourhood watch groups, which are sometimes set up as a genuine response to fear of crime in rural areas where there is no police presence but may also sometimes be under the control of local landowners or political groups. MICIVIH reported that five security agents from the Port-au-Prince city hall were dismissed after their alleged involvement in the killing of a suspected thief in August 1996. They had also received reports of beatings by members of the *Conseil d'administration des sections communales (CASEC)*, Municipal Section Administrative Councils, in some rural areas.

In December 1996, the Ministers of Justice and the Interior issued a joint communiqué prohibiting the establishment by municipal authorities of parallel police forces and stressing that the HNP is the only armed body authorized to operate under the Haitian Constitution and the laws of the republic. Despite the order, several mayors announced that they intended to retain their own security forces. In February 1998 Robert Manuel, Secretary of State for Public Security, ordered the municipal authorities of Port-au-Prince, Delmas and Croix-des-Bouquets to hand in all automatic weapons in their possession. The mayor of Port-au-Prince, Manno Charlemagne, who at first reportedly refused to disarm his security guards on the grounds that he feared that his life was at risk from political opponents, later complied with the order. However, as of March 1998, the mayor of Croix-des-Bouquets has still not done so and the situation in Delmas was not clear. Since 1994, there has been general concern about the failure of the authorities to effectively disarm former soldiers and paramilitary. The Minister of Justice recently called for nationwide general disarmament and for a discussion about how to bring it about. Given Haiti's history and the role that paramilitary groups such as the *Volontaires dela sécurité nationale (VSN)*, National Security Volunteers, known commonly as the "*tontons macoutes*", have played, Amnesty International believes that it is particularly important for the Haitian Government to take stringent measures to prevent the re-emergence of similar such groups. The status of armed security corps that do not form part of the HNP needs to be regularized. Resolution 1994/67 regarding Civil Defence Forces, adopted by the Commission on Human Rights on 9 March 1994, recommends that:



“whenever armed civil defence forces are created to protect the civilian population, Governments establish, where appropriate, minimum legal requirements for them, within the framework of domestic law, including the following:

- (a) Civil defence forces shall only be deployed for the purpose of self-defence;
- (b) Recruitment into them shall be voluntary and shall be effectively controlled by public authorities;
- (c) Public authorities shall supervise their training, arming, discipline and operations;
- (d) Commanders shall have clear responsibility for their activities;
- (e) Civil defence forces and their commanders shall be clearly accountable for their activities;
- (f) Offences involving human rights violations by such forces shall be subject to the jurisdiction of the civilian courts.”

### **Disciplinary measures and training**

According to the latest report of the UN Secretary General on MIPONU<sup>30</sup>, by the end of January 1998, the HNP Inspector General’s Office had received a total of 2,126 complaints since the HNP had been established in 1995. Investigations of those complaints had led to the dismissal of 215 members and the suspension of some 500 others. The report pointed out that “allegations of mistreatment by police officers have yet to be taken as seriously as they should”. It was not clear from the figures how many dismissals or suspensions may be related to human rights violations. As of November 1997, some 60 police officers were reportedly detained in the capital on a variety of charges, ranging from drugs offences and robbery to murder, rape and torture. As far as Amnesty International is aware, none of the cases in which police officers have been accused of human rights violations and which have been referred to the courts have so far come to trial.

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<sup>30</sup> “Report of the Secretary-General on the United Nations Civilian Police Mission in Haiti”, S/1998/144, 20 February 1998.

The police disciplinary code, adopted in February 1996, defines sanctions and establishes punishments for a large number of infractions and recognizes criminal and disciplinary responsibility in cases where an agent “carries out an order which may lead to an attack on life, physical integrity or the freedom of persons”. It also defines sanctions for police brutality. It does not as yet include, however, specific sanctions relating to excessive use of force, extrajudicial or summary executions, enforced “disappearance” or torture. Amnesty International would urge the Haitian authorities to incorporate such sanctions into the disciplinary code as soon as possible.

In November 1996 the Minister of Justice issued a circular to prosecutors, judges, police and prison officials reminding them that, in accordance with Haiti’s obligations under international law, prosecutors are obliged to act as a matter of course in the case of human rights violations, including those committed by police officers. He reminded them that it was not necessary for them to await an official complaint but that they were obliged to act on any violation, however they may have heard of it, including through the press and media. In cases resulting in death or injury from use of force or firearms, police authorities are obliged to inform their superiors and the Police Inspector General within 12 hours. Where a *prima facie* crime has been committed, they must also inform immediately the public prosecutor or justice of the peace and send them all relevant information. The Police Inspector General is also obliged to inform the public prosecutor immediately of any such cases that come to his attention by whatever means.

A recent joint report by the National Coalition for Haitian Rights (NCHR) and the Washington Office on Latin America (WOLA), entitled “Can Haiti’s Police Reforms Be Sustained?” and dated January 1998, found that while high-profile cases of police abuse, such as killings and drugs-related crimes, are usually investigated and punished, the Inspector General has not punished many cases of police beatings. The report states: “We are concerned that neglecting police beatings on the grounds that they are relatively less important sends a message of tolerance for abuse which may be contributing to its stubborn persistence in the force today.” Amnesty International endorses this view and calls on the Inspector General and the police authorities at all levels to send as strong a message as possible to police personnel that such behaviour will not be tolerated by immediately suspending anyone suspected of illtreating a detainee and immediately carrying out a thorough investigation into the circumstances of the incident. If sufficient evidence is found, the case should be immediately passed to the courts for action. The NCHR/WOLA report also expressed concern that a new and very necessary auditing function which has recently been attributed to the Inspector General’s Office may impact negatively on the investigative work unless additional resources were provided. Again, Amnesty International shares this concern and urges the Haitian authorities not only to ensure that the investigative work does not suffer in any way as a result of the changes but to endeavour to expand such work as a matter of urgency.

Amnesty International welcomes reports that, in response to a directive from the *Conseil national de la PNH*, Superior Council of the HNP, the Inspector General was to start issuing monthly bulletins in December 1997 detailing the cases under investigation at his office, including the allegations, the nature of the crime or human rights violation alleged, the name and rank of the police officer, and the status of the investigation or prosecution. However, at the time of writing, it is not yet clear whether such bulletins are in fact being issued.

Police training is at present being organized jointly by MIPONUH, MICIVIH, the UN Development Program (UNDP) and the International Criminal Investigative Training Assistance Programme (ICITAP) of the United States. Training in police ethics, human rights and the handling of weapons clearly needs to be stepped up at all levels and Amnesty International would urge all concerned to continue to encourage and support such initiatives. If not already in place, consideration should also be given to developing joint training programs for the police and the judiciary so that each has a better understanding of the other's role.

### **Arbitrary detentions**

Amnesty International has received frequent reports that the HNP continue to make arrests without regard for Haitian or international law and that judges sometimes permit detainees to remain in detention, without ruling on the legality of the arrest, beyond the 48 hours permitted by the Haitian Constitution. Arrests may take place only between 6am and 6pm and only on the basis of a warrant issued by a court except in cases of *flagrant délit*. Once a judge has confirmed the detention and the reasons for it, an investigation, which normally should take three months, is opened. Over the past two years, a number of people have been arrested for allegedly conspiring against the government on the basis of apparently flimsy evidence and often without adhering to the correct legal procedures. Most but not all have since been released without charge.

On 16 November 1997, in what was clearly a well-planned and premeditated operation carried out under the directions of the Police Chief and the Secretary of State for Security who were reportedly present at the scene, **Léon Jeune**, a former Secretary of State for Security and presidential candidate, and his chauffeur, **Lony Benoit**, were arrested at the former's home in Port-au-Prince in what the police subsequently claimed was *flagrant délit*. According to reports received by Amnesty International, a heavily-armed SWAT team, accompanied by senior police officers, arrived at the house at approximately 6pm, cut off the electricity and fired shots towards the house without warning. They then entered the house without a warrant. Lony Benoit was reportedly punched and kicked and left lying on the ground outside the house. Léon Jeune was handcuffed and made to lie down next to him where he was hit on the back of the head

and kicked in the chest, before being taken away into police custody. The authorities alleged that Léon Jeune was involved in a plot against the government, including supposed plans to assassinate President Préval. However, no concrete evidence was presented and, despite the fact that two judges, one shortly after the arrests were made, ordered their immediate release on the grounds that the arrests were illegal, they remained in detention. The two were eventually released on 11 December. An investigation was reportedly continuing into the alleged charges against them but, as far as Amnesty International is aware, there have been no further developments. It is not clear whether the Inspector General's Office opened an investigation into the reports of ill-treatment.

Amnesty International is concerned that these and other arrests may have been carried out because of political or other considerations rather than on the basis of concrete evidence. It welcomes the release of Léon Jeune and Lony Benoit in this instance but remains concerned about the situation of several other people who remain in detention without trial and whose legal situation appears to be irregular. They include Evans François, the brother of former coup leader Michel François, who has been held at the disposition of the public prosecutor's office since his arrest on 18 April 1996. A release order was issued in his favour on the grounds of illegal detention in June 1997 but has never been executed. The authorities have reportedly said that they are holding him for his own safety. Former army captain Estève Cantave was detained on 29 May 1996 after he had been named in a collective arrest warrant for a group of 26 people on charges of "destabilization", murdering policemen, associating with criminals, and other offences. A release order issued in his favour in June 1996 was never executed and his file has reportedly never been passed from the prosecutor's office to the investigators' office. Former army general Claude Raymond, Claude Schneider and Phaniel Dieu were arrested in July 1996, allegedly for "terrorist actions intended to destabilize the government". After little or no action was taken to investigate their cases, responsibility for the investigation was reportedly reassigned to a new judge in January 1998. There are believed to be at least three other former soldiers in a similar situation.

According to article 9 of the International Covenant on Civil and Political Rights:

"1. ... No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or release...

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful...”

Amnesty International therefore calls on the Haitian authorities to clarify the legal situation of the detainees named above and, if there are legal grounds to justify their continued detention, to bring them to trial within a reasonable time in accordance with international fair trial norms.

### **Police investigations of suspicious killings**

There have been a number of unsolved murders in Haiti since October 1994 which some sources, especially in the USA, have repeatedly insisted were politically-motivated. The US Federal Bureau of Investigations (FBI) has claimed that in some cases there is evidence of the involvement of Haitian officials. Amnesty International is continuing to investigate these allegations but has so far received little convincing evidence to indicate that such practices are part of a deliberate government policy to eliminate opponents. However, the failure of the Haitian authorities to carry out serious investigations into these and many other violent crimes does little to dispel such suspicions. Nevertheless, it is also true to say that the capacity of the inexperienced HNP to seriously investigate such murders is also severely limited, especially in the field of forensic and “scene of crime” investigations, and should be enhanced as a matter of urgency.

Amongst the so far unsolved murders are the assassination of lawyer and government opponent Mireille Durocher Bertin and her client Eugène Baillergeau in March 1995, who were machine-gunned to death in a car in broad daylight in a busy Port-au-Prince street<sup>31</sup>, and that of Pasteur Antoine Leroy and Jacques Florival, both leading members of the *Mobilisation pour le développement national (MDN)*, Mobilization for National Development, a political opposition party, in August 1996. Witnesses claim that three carloads of men armed with automatic weapons arrived at Jacques Florival’s house and started shooting into the air, warning all bystanders to lie down on the ground. They then reportedly shot Antoine Leroy outside the house and drove away, leaving Jacques Florival handcuffed in the back of a car with a bullet through his head. It is thought that Jacques Florival may have been kidnapped earlier. The murders took place shortly after an attack on a Port-au-Prince police station, believed to have been carried out by former soldiers and resulting in the arrest of several MDN members. Some sources speculate that the murders may have been the result of factional in-fighting within the MDN.

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<sup>31</sup> See “*Haiti: A Question of Justice*”, AMR 36/01/96, January 1996.

Following the murder of Mireille Durocher Bertin in 1995, the FBI was called in to assist with the investigation and subsequently claimed that it had found evidence to link the case to other killings and that government security officials may have been involved. However, they withdrew some months later after accusing Haitian government officials of not cooperating fully in the conduct of the investigation. In late 1995, a special unit - the *Unité d'investigation spéciale*, Special Investigative Unit (SIU) - was set up within the HNP to investigate such serious crimes and US investigators were again reportedly sent to assist them.

The US authorities alleged that members of the US-trained *Unité de sécurité présidentielle (USP)*, Presidential Security Unit, responsible for the personal security of President Préval, were responsible for the MDN murders. Shortly afterwards, President Préval announced a reorganization of the USP. A police investigation into the murders was also opened and it was later revealed that Eddy Arbrouet, who, according to some sources, was an auxiliary member of the USP and may have been involved in other suspicious killings, including those of Mireille Durocher Bertin and Eugène Baillergeau, was being sought in connection with the case. On 14 December 1997, Eddy Arbrouet was reportedly shot dead by HNP agents in Léogane during an armed confrontation. As far as Amnesty International is aware, no one else has been arrested in connection with the MDN murders or the case of Mireille Durocher Bertin and her associate.

In October 1997 a prison guard was arrested and two other prison guards were being sought in connection with the murder of parliamentary deputy Louis Emilio Passé who had been shot in the capital on 6 October and died later of his injuries. The deputy, who represented Dame-Marie in the department of Grand Anse, south-western Haiti, was a member of the so-called anti-neoliberal block in the parliament who are opposed to the present government's economic policies and some sources have alleged that his murder was politically-motivated. However, Amnesty International has received conflicting reports regarding the possible motivation for his murder, including some allegations that the deputy was himself armed and that the prison guard shot him in self-defence.

Amnesty International continues to call on the Haitian authorities to continue to make every effort to clarify the circumstances of these killings and to identify those responsible in order that they may be brought to justice. Such investigations should be thorough and impartial and conform to standards set forth in the UN Principles on Extra-Legal, Arbitrary and Summary Executions and supplemented by the UN *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*. The capacity of the HNP to carry out such investigations, including forensic and scene-of-crime training, should be enhanced as a matter of urgency.

### **Ill-treatment in Haitian prisons**

It is generally recognized that prison conditions in Haiti have substantially improved since October 1994 though they still fall far short of the UN Standard Minimum Rules for the Treatment of Prisoners. In the past prisons were run by the army. In June 1995 the *Administration pénitentiaire nationale (APENA)*, National Penitentiary Administration, was established. Many of the present guards are former soldiers who initially received only two weeks' training. There have been occasional, though not frequent, reports of beatings by prison guards. The Deputy Director of APENA, Clifford Larose, admitted to Amnesty International in February 1997 that "the military reflex" still existed and that the question of ill-treatment was "a gamble not yet won". He blamed the problem partly on the severe shortage of prison personnel, with only one guard for every 8.7 detainees (he said they were aiming for 1:4), which was compounded by the severe overcrowding. Like the Inspector General of Police, he complained about the problems with the justice system. He said that 92% of the prison population were still awaiting trial and that the severe delays in bringing people to trial led to situations where a detainee accused of a very minor offence could spend up to a year or more in prison without trial. He welcomed the establishment of the presidential commission to study this problem and noted that there had already been some progress. Women, men and minors are now all held in separate facilities. He admitted that minors should not be in prison but said that for the time being there was nowhere else for them to go. He added, however, that the Ministry of Justice was seeking funding to convert the former prison in Croix-des-Bouquets into a rehabilitation centre for minors and convicted adults.

In November 1995 over 20 minors detained in Fort National, a prison in Port-au-Prince housing women and minors, were reportedly beaten by four APENA guards. The incident was investigated by MICIVIH but by July 1997 no satisfactory administrative or judicial inquiry had been instituted.

On 24 April 1997 a presidential decree merged APENA with the HNP. According to MICIVIH<sup>32</sup>, the merger:

"slowed down some of the reforms needed, including the finalizing of an internal code of conduct and mechanisms for investigating and sanctioning misconduct. Clear guidelines are also needed regarding the carrying of firearms by prison personnel to avoid incidents of misuse which have already occurred and to correct the growing perception among APENA guards that they are police agents and therefore have a right to carry and use weapons, as well as to make arrests."

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<sup>32</sup> "The Situation of Democracy and Human Rights in Haiti - Report of the Secretary-General", A/52/687, 18 November 1997

MICIVIH have expressed concern that allegations of abuse by prison officials are not seriously dealt with, with often only a general reprimand being handed down. In a July 1997 report on Haitian prisons<sup>33</sup>, the mission said that it had come across only two cases in which prison guards had been sanctioned for ill-treating detainees: Two guards at the National Penitentiary had been suspended for two weeks without pay for ill-treating six detainees in September 1995. No further action was taken against them and one of them was later reportedly implicated in subsequent allegations of ill-treatment in 1996 and 1997 in Cap Haïtien, to where he had been transferred after the earlier incident.

Amnesty International calls on the Haitian authorities to ensure that ill-treatment is not tolerated within APENA establishments and that any prison official found responsible for carrying out or ordering the ill-treatment of detainees should be brought to account. Mechanisms for investigating and sanctioning misconduct, as well as guidelines on the use of firearms by prison personnel, should be established as a matter of urgency.

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<sup>33</sup> “*Les Prisons en Haïti*”, MICIVIH, juillet 1997.



## **CONCLUSIONS AND RECOMMENDATIONS**

It is the responsibility of the Haitian Government, the Haitian Parliament and the judiciary to work together to end impunity for human rights violations, past and present. Some positive steps have already been taken and there are signs that further progress may be made in the medium to long term. However, many mistakes have also been made and political wrangling has been allowed to interfere with the urgent task of establishing strong institutions that will protect and respect human rights for the future. The general situation remains extremely fragile and Amnesty International believes that it is imperative for the Haitian Government to demonstrate that it has the political will to carry the project through by implementing the following measures as a matter of urgency. The UN, OAS, foreign governments and other international and regional bodies must support such efforts in whatever way they can in accordance with internationally-established human rights principles. The future of human rights in Haiti is on the edge of a dangerous precipice. Failure to act NOW may have dire consequences.

### **I. Recommendations to the Haitian authorities**

#### **Regarding Justice and Impunity**

1. The authorities must give the highest priority to the process of judicial reform in order to guarantee to everyone the right to unimpeded access to justice and the right to a fair, prompt and impartial trial.
2. International standards regarding the judiciary, including the UN Basic Principles on the Independence of the Judiciary, the UN Guidelines on the Role of Prosecutors and the UN Basic Principles on the Role of Lawyers, should be incorporated into Haitian legislation and reflected in legal practice in order to create an independent, impartial and effective judiciary. In order to comply with these Principles, the necessary resources should be provided and all allegations of corruption should be investigated promptly and impartially.
3. The government should provide a full and public report of what steps have already been taken, and what plans there are for the future, to implement the recommendations of the National Commission of Truth and Justice. Adequate human and material resources should be given to any bodies which have been established to implement such recommendations. Steps should be taken to ensure the protection of both those who testified to the Commission and of those identified as responsible for human rights violations. Where there is conclusive evidence, the latter should be prosecuted in accordance with international fair trial norms.

4. The victims of human rights violations committed by agents of the State, or by individuals acting with the State's consent, should receive adequate reparation. Amnesty International considers that reparation should include financial compensation and rehabilitation measures, as well as medical care and assistance which help the victim and his or her relatives to overcome the consequences of physical or psychological injury. It should also include any legal measures necessary to restore the victim's dignity and reputation. The body responsible for handling reparation for the victims should receive the necessary resources to carry out its work. The State should also take appropriate measures to ensure that the victims do not again have to endure violations which harm their dignity.
5. The authorities should continue with their efforts to bring to trial those responsible for human rights violations, past and present, while ensuring that international standards of fairness are adhered to in all cases. While further delays would be regrettable, the advantages of the enhanced fairness of the trials would outweigh the adverse effects of any delays.
6. The authorities must ensure the security of all those involved in trials of human rights violators, including complainants and their relatives, judges, lawyers, witnesses, human rights activists and the defendants and their families.
7. The Haitian Government should ratify as soon as possible the UN Convention against Torture, the International Covenant on Economic, Social and Cultural Rights, the two optional protocols to the International Covenant on Civil and Political Rights, the Inter-American Convention to Prevent and Punish Torture and Inter-American Convention on the Forced Disappearance of Persons, and incorporate such standards, as well as those it has already ratified, into domestic legislation, including the constitution. It should also recognize the jurisdiction of the Inter-American Court of Human Rights.
8. The National Assembly should follow up as soon as possible the recommendations made by the ngo-sponsored International Tribunal Against Violence Against Women in Haiti, in accordance with the commitment made by the President of the Assembly in December 1997.
9. The Haitian authorities should ensure that the scope of the mandate of the Ombudsman can address all types of human rights violations committed by officials or employees of all branches of government. Adequate funding should be provided to the Ombudsman and his staff to enable them to carry out their work.

10. The Haitian authorities should clarify the legal situation of Evans François, Estève Cantave, Claude Raymond, Claude Schneider, Phaniel Dieu and other detainees held in similar situations. If there are legal grounds to justify their continued detention, they should be brought to trial within a reasonable time in accordance with international fair trial norms.
11. The Haitian authorities should continue to carry out thorough and impartial investigations into cases of killings which have occurred since October 1994 and which may constitute extrajudicial executions. Such investigations should conform to standards set forth in the UN Principles on Extra-Legal, Arbitrary and Summary Executions and supplemented by the UN *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*.
12. In order to deter further acts of “popular justice”, the Haitian authorities at all levels should make it clear that such acts will not be tolerated, by ensuring that those responsible are brought to justice in accordance with Haitian and international law and issuing clear statements to that effect.
13. In general, the Haitian Government and institutions responsible for ensuring justice and respect for human rights should act with greater transparency and accountability. They should provide regular reports to the Haitian parliament and the general public regarding matters relating to human rights.

### **Regarding Policing**

1. The Chief of Police and the Inspector General of Police need to send a strong message to all police personnel that extrajudicial executions, the unnecessary use of firearms and torture and ill-treatment of all kinds, including beatings, will not be tolerated. Senior police officers need to maintain strict chain-of-command responsibility to ensure that agents under their command do not commit such abuses. Officers who order or permit agents under their command to commit human rights violations should be brought to justice for such acts. Any police officer suspected of committing such violations should be immediately suspended and an independent and impartial investigation carried out to determine whether the case should be forwarded to the courts for prosecution.
2. All HNP personnel must be made fully aware of, and abide by, the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In the light of reported proposals to amend the police law to enable certain HNP units to carry heavy weapons, the authorities should ensure that the laws relating to the use of such weapons conform to international standards.

3. The police disciplinary code should be amended to include specific sanctions relating to excessive use of force, extrajudicial or summary executions, enforced “disappearance” and torture, in keeping with relevant international standards.
4. The Inspector General of the HNP should publish regular detailed reports of the status of investigations and prosecutions relating to police officers suspected of committing human rights violations. Adequate resources should be provided to the Inspector General’s Office so that it can carry out its work promptly and effectively throughout the country.
5. Given Haiti’s history and the role that paramilitary groups such as the “*tonton macoutes*” have played, the Haitian authorities should take stringent measures to prevent the re-emergence of similar such groups. The status of armed security corps that do not form part of the HNP needs to be regularized. Any armed civil defence forces that might be created to protect the civilian population should be established in accordance with the minimum legal requirements recommended in UN Resolution 1994/67 regarding Civil Defence Forces.
6. The capacity of the HNP to carry out serious investigations into violent crimes, including possible extrajudicial executions, shootings and rape, should be enhanced as a matter of urgency. Particular attention should be given to improving forensic and scene-of-crime expertise.
7. Both the HNP and the judiciary should be under strict orders to carry out arrests and searches solely in accordance with Haitian law and Haiti’s obligations under the ICCPR.

### **Regarding Prisons**

1. An internal code of conduct and an independent and impartial prison inspectorate should be established for APENA as a matter of urgency.
2. In order to send a clear signal that ill-treatment will not be tolerated in Haitian prisons, any prison official suspected of having beaten or ill-treated a detainee in any way should be immediately suspended pending investigation by an independent body in order to determine what further action might be appropriate. Where there is sufficient evidence against him/her, the official should be subjected to appropriate disciplinary or judicial proceedings. Appropriate action should also be taken against any senior prison official found to have sanctioned or ordered a guard to beat or otherwise ill-treat a detainee.

3. Clear guidelines need to be established as a matter of urgency regarding the carrying and use of firearms by prison personnel.
4. A separate rehabilitation facility for minors should be established as soon as possible.
5. As a long-term aim but at the earliest possible opportunity, the authorities should be seeking, with the assistance of foreign governments and international organizations, to achieve prison conditions that are consistent with the UN Standard Minimum Rules for the Treatment of Prisoners and other relevant international standards.

## **II. Recommendations to the US and Haitian authorities**

1. The US authorities should immediately return intact to the Haitian Government the 160,000 pages of documents and photographs seized by US troops in 1994 from army, police and paramilitary offices in Haiti. Upon their return, as in the case of any such sensitive information, the Haitian Government should take appropriate measures to ensure the security of all those who might be identified in the documents as being responsible for human rights violations or other activities of an incriminating nature, as well as the security of the documents themselves. They should also ensure that any legal proceedings initiated on the basis of the information contained therein are carried out in accordance with international standards for a fair trial.
2. The US authorities should also pass on to the Haitian authorities any other information in the possession of the CIA or other US government agencies which may shed light on the identity of those responsible for human rights violations in Haiti. US Congress should consider conducting an independent investigation into the possible direct or indirect involvement of US officials in human rights violations in Haiti at the time of the *de facto* military government. Any US citizens found responsible for such violations should be held to account for their actions.

## **III. Recommendations to the US and other governments**

1. While the obligation to bring human rights violators to justice rests primarily with the Haitian Government, other governments also share that obligation. This principle should apply wherever such people happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the commission of the crime. If suspected human rights violators are returned to Haiti, the US and other

governments should assist the Haitian authorities in any way they can to ensure that they receive a fair trial, including by providing any evidence that might be in their possession or by providing appropriate legal expertise to assist in the preparation and holding of the trial.

**IV. Recommendations to international organizations and governments involved in providing economic and technical assistance to Haiti**

1. International governmental and non-governmental organizations should continue to give the highest possible priority to assisting the Haitian Government in the task of judicial reform. International organizations and aid donors should work as closely as possible with the Haitian Government, as well as with each other, to ensure that projects that are under way to support judicial reform are both appropriate for Haiti and consistent with international standards. When evaluating their projects in Haiti, they should take into account evaluations of their programs that have been undertaken by Haitian ngo's and others.
2. The joint OAS/UN Civilian Mission in Haiti (MICIVIH) should strengthen as much as possible their work with Haitian human rights organizations in order to increase their institutional capacity and develop their expertise in human rights monitoring, education and promotion. Both the OAS and the UN should establish a long-term strategy for ensuring continued human rights monitoring and the protection of human rights defenders in Haiti once MICIVIH has departed from the country.
3. International organizations and foreign governments assisting in the training of the Haitian National Police should continue to ensure that human rights training and education is incorporated into all aspects of such training and should encourage the Haitian authorities to bring to justice any police officer who is alleged to have committed or ordered human rights violations. If not already in place, consideration should also be given to developing joint training programs for the police and the judiciary so that each has a better understanding of the other's role.
4. International organizations and foreign governments who have appropriate expertise should offer to assist the Haitian authorities in any way they can in bringing to trial human rights violators, for example, by offering the help of legal experts at all levels of the judiciary to serve alongside Haitian judicial officials.
5. Foreign governments, international governmental organizations and non-governmental organizations with appropriate expertise should help Haiti

establish a recruitment and training program to train a greater number of Haitian defence lawyers.

6. International financial institutions should evaluate the possible impact of their programs on the ability of the Haitian Government to guarantee respect and protection of all human rights.